

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1915.

No. 777.

THOMAS KELLY, APPELLANT,

ELVIN J. GRIFFIN, JAILER OF LAKE COUNTY, ILLINOIS, vs.

*Wm J Bradley US Marshal
for the Northern District of Ill.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF ILLINOIS.

northern

FILED DECEMBER 24, 1915.

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THE EASTERN DISTRICT OF ILLINOIS.

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1 In the District Court of the United States for the Northern
District of Illinois, Eastern Division.

No. 32288.

THOMAS KELLY, Petitioner,

vs.

JOHN J. BRADLEY, Marshal of the United States for the Northern
District of Illinois, and Elvin J. Griffin, Jailer of Lake County,
Illinois, Respondents.

Messrs. Miller, Starr, Brown, Packard & Peckham, Mr. Charles
L. Cobb, Mr. Pierce Butler & Mr. W. A. T. Sweatman, attorneys for
petitioner.

Messrs. Bulkley, More & Tallmadge, attorneys for Elvin J. Griffin,
Sheriff & Jailer, &c., and for British Consul General, at Chicago.

2 Pleas in the District Court of the United States for the North-
ern District of Illinois, Eastern Division, begun and held
at the United States Court-room, in the City of Chicago,
in said District and Division, before the Honorable Kene-
saw M. Landis, District Judge of the United States for the
Northern District of Illinois, on Wednesday, the twenty-
fourth day of November, being one of the days of the
November Term of said Court, begun Monday, the first
day thereof, in the year of our Lord one thousand nine
hundred and fifteen, and of the Independence of the
United States of America the one hundred and fortieth
year.

Present: Honorable Kenesaw M. Landis, Judge of said Court,
presiding; John J. Bradley, United States Marshal for said District,
and T. C. MacMillan, clerk of said court.

3 In the District Court of the United States for the Northern
District of Illinois, Eastern Division.

No. 32288.

THOMAS KELLY, Petitioner,

vs.

JOHN J. BRADLEY, United States Marshal for the Northern District
of Illinois, Respondent.

Be it remembered, that heretofore to-wit: on the thirteenth day
of November, 1915, came the Petitioner in the above entitled cause
by his attorneys and filed in the clerk's office of said Court a certain
Petition, praying for the issuance of a Writ of Habeas Corpus,
directed to John J. Bradley, United States Marshal for the Northern

District of Illinois, and also praying for the issuance of a Writ of Certiorari, directed to Lewis F. Mason, United States Commissioner for the Northern District of Illinois, and Commissioner under the laws of the United States concerning the extradition of fugitives from the justice of a foreign country under a treaty between the United States and a foreign country. Said petition, together with Exhibits A, B, and C, thereto attached, are in words and figures following to-wit:

4

Petition.

UNITED STATES OF AMERICA,

Northern District of Illinois, Eastern Division:

To the Honorable the District Court of the United States in and for the Northern District of Illinois, Eastern Division:

The petition of Thomas Kelly respectfully shows:

I. That your petitioner is now actually imprisoned and restrained of his liberty and detained in said division and district, by color of the authority of the United States, in the custody of John J. Bradley, Esq., United States Marshal, in and for the Northern District of Illinois, to-wit: in the Division, District and Circuit mentioned.

That the sole claim and sole authority by virtue of which the said John J. Bradley, United States Marshal as aforesaid, so restrains and detains your petitioner, is a certain paper which purports to be a commitment in writing, a copy of which is hereunto annexed marked Exhibit "A" and made a part of this petition.

II. Upon information and belief petitioner states that the said commitment was issued by Lewis F. Mason, Esq., a United States Commissioner, at the City of Chicago in said division and district, in certain extradition proceedings instituted or prosecuted by Horace D. Nugent, His Britannic Majesty's Consul General at Chicago, Illinois, (purporting to act in said capacity as the consular representative of His said Britannic Majesty,) under color of certain Treaties between the United States and the United Kingdom of Great Britain and Ireland,—upon certain charges which a certain affidavit or complaint under oath signed and sworn to by the said Nugent upon his information and belief, and presented to said Lewis F. Mason, United States Commissioner as aforesaid, on the 15th day of October, 1915, purports to set forth as follows:

5 "First. That one Thomas Kelly, late of Winnipeg in the province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty, has been guilty of the following crimes:

1. Perjury.
2. Obtaining money by false pretenses.
3. Larceny or embezzlement, and the obtaining of money, knowing the same to have been embezzled, stolen or fraudulently obtained.

Second. That he, the said Thomas Kelly, on or about the 26th day of March, A. D. 1915, at Winnipeg aforesaid, did unlawfully commit perjury by swearing in a judicial proceeding, to-wit, before

the Public Accounts Committee of the Legislative Assembly of the Province of Manitoba, in words to the effect that the proportions in which the ingredients were in the concrete in the caissons of the new parliament buildings at Winnipeg in Manitoba, constructed by Thomas Kelly and Sons, were one, two and four, or one and six, one of cement, two of sand and four of broken stone, and that the amount of cement was a little over a barrel and one-half in each cubic yard of concrete in said caissons, such assertion being then and there known to the said Thomas Kelly to be false and being intended by him to mislead the Committee, contrary to the statute in such case provided.

Third. That said Thomas Kelly was also then and there guilty of the crime of obtaining money by false pretenses; that between the 16th day of July, 1913, and the 1st day of January, A. D. 1915, at Winnipeg, aforesaid, the said Thomas Kelly did unlawfully obtain from the firm of Thomas Kelly and Sons, from the provincial officers of the province of Manitoba, having the care, custody, control and disbursing of public funds, with intent to defraud His Majesty the King in the right of the Province of Manitoba in the Dominion of Canada, the sum of to-wit, One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00); that he obtained during the period aforesaid Seven Hundred Seventy-nine Thousand Nine Hundred and Eighty-seven Dollars (\$779,987.00) of the moneys of the Province of Manitoba on account of the pretended extra work done and materials furnished in construction of caissons for the new parliament buildings at Winnipeg, upon false and fraudulent representations and statements that Thomas Kelly and Sons had put in upwards of Thirty-five Thousand (35,000) cubic yards of reinforced concrete, used One Million Two Hundred and Thirteen Thousand (1,213,000) feet of lumber, and Seven Hundred and Ninety-seven and Five-tenths (797 5/10ths) tons of iron rings and bolts, and that the fair and reasonable value for the concrete was twelve dollars (\$12.00) per cubic yard, and for excavating Seven Dollars (\$7.00) per cubic yard, Forty Dollars (\$40.00) per thousand feet for the lumber, and One Hundred and Forty Dollars (\$140.00) per ton for the iron rings and bolts, the said Thomas Kelly then and there well knowing the fact to be that he had not put in said caissons to exceed Twenty-three Thousand One Hundred and Fifteen (23,115) cubic yards of concrete, or used to exceed, to-wit, One Hundred Thousand (100,000) feet of lumber, or to-wit, Forty (40) tons of iron rings and bolts, and that the fair and reasonable cost and value of said extra work done and materials furnished, including a Ten per cent (10%) profit to said contractors, did not then and there exceed Ninety-nine Thousand Two Hundred and Ninety-two Dollars and Fifty Cents (\$99,292.50); that said moneys, and other moneys, were so obtained by said false pretenses and other false pretenses, with intent to defraud His Majesty the King in the right of the Province of Manitoba, contrary to the laws of the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty.

Fourth. That said Thomas Kelly between the first day of May,

1913, and the first day of May, 1915, at Winnipeg aforesaid, did steal money, valuable securities or other property belonging to His Majesty the King in the right of the Province of Manitoba, and at the said place and times did also unlawfully receive money, valuable securities or other property belonging to His Majesty the King in the right of the Province of Manitoba which had theretofore been embezzled, stolen or fraudulently obtained by means of an unlawful and fraudulent conspiracy entered into between said Thomas Kelly, Sir Rodmond P. Roblin, then and there premier of the Province of Manitoba, Walter H. Montague, then and there Minister of Public Works, James H. Howden, then and there Attorney General, George R. Coldwell, then and there acting Minister of Public Works and Minister of Education, R. M. Simpson, Victor W. Horwood, then and there Provincial Architect, and others, to defraud His Majesty the King in the right of the Province of Manitoba out of large sums of money by means of false and fraudulent contracts or extras in the construction by the firm of Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, of the new parliament buildings at Winnipeg, Manitoba, and by false and fraudulent estimates and statements of the amount and quantity of labor and materials necessary to make the changes desired, and false and fraudulent and exorbitant values for the same, and that by means of such false and fraudulent scheme, of fraud and deception, entered into, participated in and carried out by said parties, said Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, fraudulently and feloniously obtained of the moneys of the Province of Manitoba, the sum, to-wit, One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00) in fraud of His Majesty the King in the right of the Province of Manitoba and contrary to the laws of the Province of Manitoba in the Dominion of Canada in the Domain of His Britannic Majesty."

and concerning which alleged offences or crimes, the said Nugent, Consul General as aforesaid, says in the said affidavit, that they are indictable offences under the laws of the Province of Manitoba and the Dominion of Canada and offences within the treaties between the United States and the Kingdom of Great Britain and Ireland.

7 The said Nugent also states in his said affidavit that he derived the information upon which his complaint is based, from copies of informations filed and warrants issued by the duly authorized officers of the Province of Manitoba in the Dominion of Canada and of depositions and Exhibits, all of which are attached and made part of his said complaint, and to which he refers for greater certainty as to the details constituting the said alleged crimes or offences; and said affidavit or complaint alleges upon information and belief that said Thomas Kelly is a fugitive from justice from the Province of Manitoba and the Dominion of Canada, and is now within the territory of the United States.

III. That the warrant on which your petitioner was by said United States Marshall first taken or received into custody was issued by said United States Commissioner on the 2nd day of October, 1915, upon the affidavit or complaint of Lewis E. Bernays, His

Britannic Majesty's Vice Counsel at Chicago aforesaid, and as the petitioner upon information and belief says, without any other evidence or showing except said affidavit or complaint of said Bernays; that in said affidavit or complaint of said Bernays he stated and charged upon information and belief, as appears in and by a copy of said affidavit or complaint hereto attached and marked Exhibit B reference to which is hereby made for greater certainty.

That your petitioner was held and detained by said United States Marshal upon said warrant last mentioned until the 15th day of October, 1915, on which day the said complaint or affidavit above mentioned of the said Nugent was laid before and filed with said Commissioner, and a warrant thereon was issued and delivered to said United States Marshal, and said warrant so first issued as afore-

8 said was thereupon returned by said Marshal, and your petitioner was from that time and until the making and issue and service of said commitment hereinabove mentioned, held and detained in custody by said Marshal under said warrant of October 15, 1915. Your petitioner is advised and charges that said affidavit or complaint of said Bernays, upon which said warrant of October 2, 1915, was issued, was not sufficient to justify or authorize the issue of said warrant thereon or the arrest or detention in custody of your petitioner thereon.

IV. Your petitioner is advised and he charges that the said affidavit or complaint of the said Nugent does not sufficiently charge or aver or set forth facts sufficient to show or tending to show the commission by the petitioner at Winnipeg in the Province of Manitoba therein mentioned, of the respective crimes therein charged, or any or either of them within the terms, meaning and intent of the Treaties between the United States and the United Kingdom of Great Britain and Ireland; and with respect to each of said alleged crimes therein mentioned severally, the said affidavit or complaint does not sufficiently charge or show or aver or set forth facts showing or tending to show the commission by the petitioner at Winnipeg aforesaid of such crimes; and that said affidavit or complaint was and is insufficient to justify or authorize the issuing by said commissioner of said warrant thereon or the detention or commitment for extradition of your petitioner.

V. That your petitioner is advised and he charges that the alleged copies of information, warrants, depositions, exhibits and other documents presented to the said Commissioner with and in support of said complaint of said Nugent respectively were not and are not, and as to each of them, that it was not and is not properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of the Province of Manitoba in the Dominion of Canada, as required by the Act of Congress of 9 August 3, 1882, and are not properly and legally authenticated so as to entitle them to be received in evidence by the said Commissioner upon the hearing of the said affidavit or complaint of said Nugent.

The action- of the said Commissioner in determining the said matter and making and issuing the said commitment were respec-

tively based upon insufficient affidavit or complaint and upon insufficiently authenticated, inadmissible, incompetent and improper evidence.

VI. The competent evidence before the said Commissioner in said matter does not show or tend to show the commission by the petitioner, Thomas Kelly, in the said Province of Manitoba of the alleged crimes charged against him in the said affidavit or complaint of the said Nugent, or any or either of them, within the terms and meaning or contemplation of the Treaties of conventions in that behalf between the United States and Great Britain.

The competent evidence before the Commissioner does not show or tend to show the commission by the said petitioner, Thomas Kelly, in the said Province of Manitoba of the alleged crime of perjury, charged against him in the said affidavit or complaint of the said Nugent, within the terms, meaning or contemplation of said Treaties.

The competent evidence before the Commissioner does not show or tend to show the commission by the said petitioner, Thomas Kelly, in the said Province of Manitoba, of the alleged crime of obtaining money by false pretense which is charged against him in the said affidavit or complaint of the said Nugent within the terms, meaning or contemplation of the said Treaties.

The competent evidence does not show or tend to show the commission by the said petitioner, Thomas Kelly, in the said
10 Province of Manitoba of the alleged crime of stealing money, valuable securities or other property belonging to His Majesty, the King of Great Britain, in the right of the said Province of Manitoba, or of the alleged crime of unlawfully receiving money, valuable securities or other property belonging to His Majesty, the King, in the right of the said Province, which had theretofore been embezzled, stolen or fraudulently obtained, which is charged against him in the said affidavit or complaint of the said Nugent within the terms, meaning or contemplation of the said Treaties.

The competent evidence before the Commissioner does not show or make probable cause for charging the said petitioner with having committed in said Province the respective crimes in the said affidavit or complaint of said Nugent charged, or any or either of them, within the meaning of the said Treaties. With respect to each of said respective crimes severally, the petitioner charges that the competent evidence before the said Commissioner does not show or make probable cause for charging him with having committed in said Province of Manitoba such crime, within the meaning of the said Treaties.

With respect to each of the said pretended crimes, with the commission of which in said Province of Manitoba the petitioner is charged in the said affidavit or complaint of said Nugent, such crime so there charged is not a crime by or under the laws of the State of Illinois or of the United States, and is not the crime referred to in or covered by the Treaties between the United States and Great Britain.

The said pretended crimes or offences charged against the peti-

tioner in and by the said affidavit or complaint of the said Nugent are not made criminal by the laws of both countries and with respect to each of the said pretended offences, the petitioner charges
11 that such crime or offense so charged is not made criminal by the laws of both countries, within the provisions, meaning and contemplation of the said Treaties.

VII. With respect to each of said charges of crime against the petitioner severally, the petitioner is advised and charges that there was not presented or brought before the said Commissioner such evidence of criminality as, according to the laws of the place where the said petitioner, Thomas Kelly, was found, would justify his apprehension and commitment for trial for or upon such pretended crime or offense, had such pretended crime or offense been there committed.

VIII. That, as your petitioner is informed and believes and is advised, the said complaint of said Nugent which was the foundation of said extradition proceedings before the said Commissioner did not state any facts or make any allegations of facts, nor did the information, warrants, depositions, and exhibits, or any of them, attached to said complaint, state or tend to prove any facts which constituted or constitute the crime of perjury within the meaning of said treaties, nor within the common law definition of said crime of perjury, nor within the Statutes of the United States defining said crime of perjury nor within the Statutes of the State of Illinois defining said crime.

That your petitioner is informed and believes and is advised, that although by the Treaty between Great Britain and the United States signed on August 9th, 1842, and known as the Webster Ashburton Treaty, as the same was enlarged in its scope by the Treaty between Great Britain and the United States signed July 12th, 1889, and known as the Blaine-Paunceforte Treaty, the crime of "perjury" by that name is made an extraditable crime, between the Government of Great Britain and the United States,—“perjury”—as the same is defined by the Criminal Code of the Dominion of Canada is
12 not a crime either by the Common law nor by the Statutes of Great Britain, nor by the Statutes of the United States, nor by the Statutes of the State of Illinois, and is not, therefore, a crime for which a person charged with the same under the Criminal Code of Canada (as is the petitioner) should or can lawfully be extradited from the United States to Canada, nor is it the crime of “perjury” under the meaning of the aforesaid Treaty.

The petitioner says that by the common law and by the Statutes of the United States and by the Statutes of Illinois, the crime of “perjury” is not committed by swearing or affirming falsely, although done in a judicial proceeding unless it is “in a matter material to the issue or point in question,” whereas by the Criminal Code of Canada (to answer a complaint under which, the extradition of the petitioner to Canada is sought in the proceeding herein involved) “perjury” is expressly defined to be an assertion by a witness in a judicial proceeding, known by such witness to be false whether such evidence is material or not. The petitioner therefore

represents that "perjury" in the Dominion of Canada, although given the name of the common law crime of "perjury" is not that crime included by that name in the Treaty nor that described in the laws of the United States or of Illinois, nor a crime at all under the common law or laws of this country. The petitioner further asserts on information and belief, and is advised, that a person extradited for the offense of "perjury" from the United States to Canada could be convicted before the Courts of Canada and sentenced to imprisonment, without proof of that which constitutes a material ingredient of the crime as known to the common laws of the United States and to the laws of Illinois.

Therefore, the petitioner represents that such extradition
13 would be illegal, unlawful and unwarranted, whatever the complaint or evidence in the proceedings asking for such extradition might show or tend to show, in regard to the materiality of the matter on which the alleged false swearing took place "to the issue or point in question" in the proceeding in which it occurred.

But the petitioner further represents that even were a person legally extraditable in any case from the United States to Canada to answer in the Courts of Canada to the offense of perjury as defined by the Criminal Code of Canada (which the petitioner denies) yet your petitioner is not so extraditable under the proceedings in this case, because there is no allegation in the complaint in this case on which the warrant of commitment by the Commissioner is based of the materiality of the matter in which the false swearing is alleged, to the issue or point in question in the proceeding in which it is alleged to have occurred.

And the petitioner further represents on information and belief and is advised that the want of such an allegation would in itself render the warrant of commitment, and the restraint of the petitioner under it for alleged crime of "perjury," illegal and unjustifiable, but he also further represents on information and belief and is advised that the evidence, proofs, documents and depositions produced before the Commissioner on the hearing of the demand for extradition on said complaint do not show or tend to show such materiality.

IX. The Petitioner further represents, on information and belief, and is advised that to constitute the crime of "perjury," as the same is defined by the Criminal Code of Canada, the common law, the laws of Great Britain and of the United States, the false swearing involved must be in some judicial proceeding, and that
14 although the complaint before the Commissioner in this matter stated that the alleged false swearing was in "a judicial proceeding" before the Public Accounts Committee of the Legislative Assembly of the Province of Manitoba, the law of Canada defines a judicial proceeding before a legislative committee to be only one in which the said Committee is empowered by law to administer an oath and also provides that a Committee of the Legislature is only empowered to administer an oath upon such bills and matters or causes as have been referred to it by the Assembly.

And the petitioner represents that in the complaint presented to

the Commissioner in this case there is no allegation, nor in the proofs, documents or depositions presented in support of the same, any evidence showing or tending to show any reference of the matter concerning or in which said false swearing is alleged, to the said Committee on Public Accounts of said Legislative Assembly. Wherefore it does not appear that the said Committee was authorized to administer an oath or that the proceeding in which said false swearing is alleged was a judicial proceeding.

That your petitioner has caused inquiry to be made as to whether the said matter or cause concerning or in which the petitioner is so charged with false swearing, was theretofore at any time referred to said Public Accounts Committee by the said Legislative Assembly, and as a result of such inquiry he alleges upon information and belief that such matter or cause was never so referred to said Committee.

X. The petitioner further represents that he is informed and believes and is so advised, that since the warrant of commitment is illegal and unjustifiable—because holding him for extradition on the alleged crime of “perjury”—as the same is defined by the Criminal Code of Canada, which, as above represented, is not an extraditable offense under the treaties invoked, nor under the laws

15 of the United States,—the petitioner is entitled to his liberty—whatever else is included in said warrant or for whatever other alleged offenses it purports to hold said petitioner for extradition,—inasmuch as to hold him for any other alleged offense also mentioned or described in the said warrant of complaint would be to subject him to extradition as well on the aforesaid non-extraditable matter and to a conviction in the Courts of Canada for a matter not a crime under the laws of the United States.

XI. And the petitioner further represents and is advised that the said complaint is illegal and the hearing of evidence to sustain the same illegal and unlawful and without jurisdiction on the part of the Commissioner, and the warrant of commitment issued on the same by the Commissioner, unlawful and unjustifiable—because they all purport to involve and include—several offenses distinct in nature and class and not cognate.

XII. But your petitioner further represents, upon information and belief, and is advised that the charges in the said complaint of offenses other than perjury,—(the said offenses being also named in the warrant of commitment aforesaid) are wholly insufficient and defective.

XIII. The petitioner upon information and belief represents and charges that the second charge in said complaint of the said Nugent,—being that of obtaining money by false pretenses, is wholly insufficient and defective upon the following grounds:

Section 404, of the said Criminal Code of Canada defines a false pretense as follows:

“404. Definition.—A false pretense is a representation, either by words or otherwise, of a matter of fact either present or past, which representation is known to the person making it to be false, and

which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation."

The said affidavit or complaint does not aver or show that the supposed false and fraudulent representations and statements therein referred to, or any or either of them, were made by the petitioner, Thomas Kelly; or that they, or any or either of them were made with a fraudulent intent to induce the person to whom made
16 to act upon such representation; or that the person to whom such alleged false and fraudulent representations and statements were made did believe them or any or either of them to be true, or did act upon such representations or any or either of them, or that said supposed false and fraudulent representations and statements, or any or either of them, were made to induce the person to whom they were made to part with the money to the said petitioner Thomas Kelly, or to the firm of Thomas Kelly and Sons.

The said second charge in said affidavit or complaint of obtaining money by false pretenses, is otherwise and upon other grounds insufficient and defective and does not sufficiently show or aver facts showing or tending to show the commission by the petitioner of the crime of obtaining money by false pretenses, within the meaning of that term under the laws of the Dominion of Canada, or under the laws of the State of Illinois, or of the United States of America, or of the Treaties between Great Britain and the United States.

XIV. And the petitioner further represents and is advised that the evidence presented before the Commissioner in supposed support of the aforesaid charges—in no manner showed or tended to show the matters in which the preceding paragraph of this petition alleges the complaint to have been defective, but, on the contrary, tended to show that if allegations supplying such defects had been made in said complaint, they would have been untrue.

The competent evidence before the said United States Commissioner does not show or tend to show that the supposed false representations or statements referred to in paragraph third of said affidavit or complaint of said Nugent, or any or either of them, were made by the petitioner, Thomas Kelly.

The competent evidence before the commissioner does not show or tend to show that the said supposed false and fraudulent
16½ representations, or any or either of them, were known to the person making them to be false.

The competent evidence before the said Commissioner does not show or tend to show that the petitioner, Thomas Kelly, with intent to defraud, by any false pretense, either directly or through the medium of any contract by such false pretense obtained anything capable of being stolen, or procured anything capable of being stolen to be delivered to any other person than himself; or that said petitioner is guilty of such pretended offense under the laws of said Dominion of Canada or Province of Manitoba.

The competent evidence before the said Commissioner does not show or tend to show that the petitioner committed or did at Winnipeg aforesaid that which would, if committed or done in the State of Illinois, constitute the crime of obtaining money, valuable securi-

ties or things or other property by false pretenses under the laws of Illinois.

The competent evidence before the Commissioner does not show or tend to show the commission by the petitioner of the crime of obtaining money, valuable securities or other property by false pretenses within the terms, meaning or contemplation of the Treaty between the United States and Great Britain in that behalf.

17 Petitioner upon information and belief shows:

That the supposed "obtaining money by false pretenses," which is in said paragraph third of said complaint mentioned and charged, refers to payments to the firm of Thomas Kelly & Sons, Contractors—a firm then composed of Thomas Kelly (the petitioner), Lawrence C. Kelly, Charles B. Kelly and Robert Emmet Kelly,—for the construction of the new Parliament Buildings of said Province at Winnipeg, (which are referred to in the evidence on the part of the said prosecutor herein,) on account of work and materials in and about such construction work; and the evidence on the part of said prosecutor before said Commissioner with respect to such payments was in substance and effect that the said work was done and materials furnished under the supervision of the Provincial Architect for said Province who was in charge thereof, and under the direct supervision and observation of inspectors under said architect—a chief inspector and assistant inspectors, who were or whose duties it was to be continuously on the said work while it was going on and that the said work was carried on under such supervision and inspection; that in order for any payments to be made to said firm on account of such work, it was necessary—and said evidence before the Commissioner was to the effect that it was done in every instance of such payments being made to said firm of Thomas Kelly & Sons—that there should be and there here was in case of each of said payments, a proper voucher coming from the Provincial Department authorizing the expenditure (the department of the Minister of Public Works here) certified by the officers of that department having charge of the expenditure then passing through the hands of the Provincial Auditor to the Provincial Treasurer; and that in case of such payments in respect of the said new Parliament Buildings, a proper voucher was presented to the Auditor of the Province, accompanied by, among other things, the certificate of the architect; and that before such payment "orders in council"—meaning orders passed by the council of Ministers of the Government of said Province authorizing or approving such payments—were passed, which orders, as your petitioner believes

18 and thereon says, were among the said "other things" accompanying the said certificates of the Architect; and that said certificates of the Architect certified that Thomas Kelly and Sons were entitled to the amounts of money set out in said respective certificates; and that thereupon checks payable to said firm of Thomas Kelly & Sons were issued for the respective amounts set out in such certificates, which checks had to be and were signed by the Provincial Treasurer or his deputy, and had to be and were beforehand countersigned by the Auditor or Acting Auditor of said Province;

and that the checks so issued to Thomas Kelly & Sons, in pursuance of such vouchers and certificates, were drawn on the Union Bank of Canada at Winnipeg and by said bank paid to the said Thomas Kelly & Sons; and that without the said certificates of the Architect and the vouchers and documents of the Auditor and the other Provincial authorities above mentioned accompanying the said certificates of the Architect, such payments would not be and would not have been made; and that such payments and each of them were made in reliance upon the said certificates, vouchers, documents and action of the said Architect, Auditor and other Provincial authorities approving such payments as aforesaid, and not upon or because of any pretenses, representations or statements of or by said firm of Thomas Kelly & Sons or of or by this petitioner.

Petitioner, upon information and belief, further says that the said evidence of or with respect to the said supposed "false pretenses" referred to in said paragraph third of said affidavit or complaint, and of or with respect to the said supposed "false and fraudulent representations and statements," which are in said paragraph third mentioned, was in substance and to the effect that such supposed pretenses, representations and statements consisted of and were certain alleged applications for payment which were presented or delivered to the said Architect, by or on behalf of said firm of Thomas Kelly & Sons, but not by this petitioner; that most of such applications were signed by Lawrence C. Kelly on behalf of the firm, and all of said applications were delivered to the office

of the said Provincial Architect at the City of Winnipeg; but none of such evidence shows or tends to show that the said applications for payment, or any or either of them, were made or signed or presented or delivered to the said Provincial Architect by this petitioner; and that such evidence was and showed, or tended to show that such payments were made, not upon or in reliance upon such applications for payment, or any supposed pretenses, representations or statements of said firm of Thomas Kelly & Sons, or of this petitioner, but in reliance upon the said certificates, vouchers, documents and action of said Provincial authorities.

XV. The petitioner charges that the third charge in the said affidavit or complaint of the said Horace D. Nugent contained or referred to in paragraph fourth thereof, namely, the supposed crime of stealing money, valuable securities or other property, and the unlawfully receiving money, valuable securities or other property which had theretofore been embezzled, stolen or fraudulently obtained, as therein charged or referred to, is wholly insufficient and defective in that it includes at least two offenses of a different nature in one accusation; and as to each, it, charges in the alternative that

the article or articles stolen or unlawfully received were "money, valuable securities or other property," and for that reason it was impossible to form such an issue upon the hearing before the Commissioner as the petitioner was entitled to have formed, and said charge or charges is or are indefinite, uncertain and insufficient.

XVI. But in relation to the different component parts of said

charge, the petitioner upon information and belief represents that the charge of stealing, theft or larceny was nullified by the matters in said complaint alleged as facts to support it, in that by said allegations it would appear that the money alleged to be stolen was voluntarily delivered by the persons from whom it is charged to have been stolen to a partnership of which the petitioner was a member, in payment for materials supposed to have been furnished and labor supposed to have been done, and that the title to said money passed to the said partnership.

XVII. The petitioner upon information and belief represents and charges that the charge of embezzlement was nullified by the matters in said complaint alleged as facts to support it, inasmuch as they necessarily negative the existence of a fiduciary relationship between the petitioner, Kelly, and His Majesty, the King, in the right of the Province of Manitoba, from whom the money involved is alleged to have been obtained.

XVIII. The petitioner charges and submits that the charge of "obtaining of money knowing the same to have been embezzled, stolen or fraudulently obtained," does not describe or state any crime under the laws of the State of Illinois or under the laws of the United States and is not, therefore, an offense for which a person can be extradited from that part of the United States included within the State of Illinois, to that part of His Britannic Majesty's Domains included within the Dominion of Canada.

XIX. The petitioner upon information and belief shows and charges that the evidence produced before the Commissioner
21 in support of said third charge did not show, nor did it tend to show, larceny, embezzlement or the "obtaining or receiving by the petitioner of money, knowing the same to have been embezzled, stolen or theretofore fraudulently obtained" within the terms, meaning or contemplation of the Treaty in that behalf between the United States and Great Britain.

And that the evidence produced before the Commissioner does not show or tend to show that the supposed money, valuable securities or other property, with the stealing of which the petitioner is charged in paragraph fourth of said Nugent's affidavit or complaint, was by the said petitioner taken or converted to the use of any person, without color of right; or that the supposed money, valuable securities or other property, which the petitioner is charged in said fourth paragraph of said Nugent's affidavit or complaint with unlawfully receiving, had theretofore been embezzled, stolen or fraudulently obtained.

22 Your petitioner further shows upon information and belief that the provisions of the Criminal Code of Canada which was in force at all the times mentioned in said complaint and in the said evidence before the said Commissioner, and is the law of said Province of Manitoba with respect to the definition of theft charged in Paragraph Fourth of said affidavit or complaint of said Nugent, are as set forth in a copy thereof attached hereto and marked Exhibit C and made a part hereof.

Your petitioner further shows that the said provisions of the

said Criminal Code of Canada are the only provisions of said Criminal Code applicable or relating to the supposed stealing of money, valuable securities or other property referred to and charged in said Paragraph Fourth of said affidavit or complaint herein; that there is no crime or offense of stealing in said Province other than the offense or crime of theft above referred to.

Upon information and belief petitioner further says that the evidence before the said Commissioner on the part of the prosecutor to support the said charge made in Paragraph Fourth of said affidavit or complaint that the petitioner did steal money, valuable securities or other property belonging to His Majesty the King in the right of the Province of Manitoba showing or tending to show or prove "the act of fraudulently and without color of right taking, or fraudulently and without color of right converting to the use of any person, anything capable of being stolen" was evidence showing or tending to show the receipt by the said firm of Thomas Kelly & Sons, of the said checks signed by the Provincial Treasurer of said Province and countersigned by the Provincial Auditor of said Province,

23 in, under the circumstances and with the vouchers, certificates and documents hereinbefore set forth in that behalf, with reference to the said charge of obtaining money by false pretenses, to which part of this petition, the petitioner here refers for greater certainty with respect thereto; and that the said evidence was that the said checks were received by the said firm of Thomas Kelly & Sons and paid to the said Thomas Kelly & Sons as hereinbefore mentioned, with color of right, and not without color of right; and that the said evidence does not show or tend to show the taking or receipt by the said Thomas Kelly, or the payment to him of said checks or any or either of them.

Your petitioner further shows upon information and belief that with respect to the charge in said Paragraph Fourth of said affidavit or complaint that said Thomas Kelly "did also unlawfully receive money, valuable securities or other property belonging to His Majesty the King in the right of the Province of Manitoba which had theretofore been embezzled, stolen or fraudulently obtained," the evidence before the said Commissioner, in support of said charge, showing or tending to show the receipt of money, valuable securities or other property in said Paragraph Fourth referred to and so charged as unlawfully receiving money, valuable securities or other property which had theretofore been embezzled, stolen or fraudulently obtained, was evidence showing or tending to show the receipt by said firm of Thomas Kelly & Sons of the said checks signed by the Treasurer of said Province and countersigned by the Auditor or Deputy Auditor of said Province and the payment of said checks to said firm, under the circumstances hereinbefore stated; and that the evidence before said Commissioner did not show or tend to show that the said checks or the proceeds thereof had theretofore been embezzled, stolen or fraudulently obtained.

24 XX. The petitioner therefore represents, on information and belief, that the complaint before the Commissioner alleged, and the evidence produced before the Commissioner tended

to show, no facts which created jurisdiction for the issuance of the aforesaid warrant of commitment and for the detention of the petitioner, or warranted any finding that he had been probably guilty of any offense within the provisions of any extradition treaty between the United States of America and the United Kingdom of Great Britain and Ireland.

XXI. The petitioner further represents that he is commorant in the State of Illinois and the Northern district of Illinois, and that he came to Chicago in said State and District on legitimate and private business, and that while so in the City of Chicago, he was on the first day of October, 1915, violently seized and deprived of his
25 liberty by certain unauthorized persons in Chicago, to-wit: police officers of the City of Chicago, acting on the telegraphic request of certain persons inimical to the petitioner in the Province of Manitoba and without any warrant or process whatever, and that he was so held until the second day of October, 1915, when he was by such persons taken to and before the said United States Commissioner at his office in said City of Chicago, and there by said persons held in custody until a warrant of arrest was then and there procured from said Commissioner on the said complaint of said Bernays, Vice Consul of His Britannic Majesty, resident in Chicago, (which complaint he charges was insufficient and void) whereupon he was then and there turned over and surrendered by said police officers to the said United States Marshal, who had received and held said warrant, and petitioner was held on said warrant until the complaint hereinbefore in this petition described was made by the Consul General of Great Britain in Chicago, and filed with said Commissioner, and thereupon the said complaint of said Bernays was dismissed and the petitioner was discharged from arrest on said former warrant and immediately then and there without his being set at liberty and without any interval of time, rearrested or held and detained on the warrant issued on said last mentioned complaint of said Consul General Nugent, and he has since remained in such custody until taken on said warrant of commitment to await the order of the President of the United States in the premises which is first above mentioned. At all times since his first wholly illegal arrest and detention without any process or pretext of process of law, the petitioner has been continuously in such custody as aforesaid, and as he represents, unlawfully and unjustifiably deprived of his liberty.

XXII. The petitioner further charges that in the said proceedings above described before said Commissioner,—said Commissioner permitted to be offered before him and admitted in evidence
26 against the petitioner, over his objections, certain documents and exhibits and other papers which, and each of them he charged and submits, under the provisions of the treaties of extradition between Great Britain and the United States, were not admissible in evidence against your petitioner, and which and each of which, under the Statutes of the State of Illinois, he charges and submits were not admissible in evidence against your petitioner, and which, and each of which, under the Statutes of the United States he charges and submits were not admissible in evidence against your petitioner and the admission in evidence of which and of each of

which he charges and submits was in violation of the Constitution of the United States and did not constitute due process of law.

Petitioner charges that the said Commissioner allowed to be offered and admitted in evidence against your petitioner, over his objection, certain papers purporting to be depositions taken in the Dominion of Canada which were incompetent and inadmissible under the treaties of extradition between Great Britain and the United States, the laws of the United States, or the laws of the State of Illinois, and which he charges and submits were not, are not, and would not be in any case admissible in evidence to prove the criminality of the petitioner before the Courts of Canada.

The petitioner represents that he objected to the continuance of any proceedings under the complaint aforesaid before the Commissioner, alleging his want of jurisdiction, and objected to the admission of the incompetent evidence against him, but that his objections were overruled by the Commissioner.

Your petitioner charges that in said extradition proceedings your petitioner was denied a due hearing and due process of law in said respects and in many other respects, and that your petitioner
27 was denied or deprived of the right to be confronted with the witnesses against him which was secured to your petitioner by the Sixth Amendment of the Constitution of the United States, or the right and opportunity of cross-examining the witnesses, pretended copies of whose depositions were offered and received against him, before the Magistrate or tribunal taking such depositions, or the right or opportunity of taking the depositions of such witnesses who were in said Province of Manitoba and refused to appear as witnesses before said Commissioner, and whose presence before said Commissioner for that purpose he was prevented from securing; and that your petitioner was denied other rights under the constitution of the United States, and that your petitioner was denied the rights secured by the Treaty between Great Britain and the United States, signed August 9, 1842, and the Treaty between the said nations signed July 12, 1889, and the Treaty between the said nations signed December 13, 1900, and that the construction of said Treaties and each of them was drawn in question in the course of said proceedings.

XXIII. Your petitioner charges and submits that under the circumstances and for the reasons hereinbefore set forth, the said proceedings before said Commissioner were absolutely void, and that your petitioner is now confined and deprived of his liberty in violation of the Constitution of the United States and in violation of the Statutes of the United States, and in violation of the rights secured to the petitioner by said Treaties and without due process of law.

XXIV. Wherefore your petitioner prays that a writ of habeas corpus may issue, directed to the said John J. Bradley, Marshal of the United States, and to each and all of his deputies, requiring him and them to bring and have your petitioner before this Court at a time to be by this Court determined, together with the true cause of
28 the detention of your petitioner to the end that due inquiry may be had in the premises, and that a writ of certiorari may at the same time issue, directed to the said Lewis F. Mason,

United States Commissioner for the Northern District of Illinois, and Commissioner under the laws of the United States, concerning the extradition of fugitives from the justice of a foreign country under a treaty between the United States and a foreign country, directing him to certify to this Court all the proceedings that took place before him and all the evidence that was offered before him in the said proceedings which resulted in the issue of the said commitment—and that the Court may proceed in the summary way to determine the facts of this case in that regard and the legality of your petitioner's imprisonment, restraint and detention, and thereupon to dispose of your petitioner as law and justice may require.

And your petitioner will ever pray.

Dated at the City of Chicago, in the Northern District of Illinois, this 12th day of November, A. D., 1915.

THOS. KELLY, *Petitioner.*

MILLER, STARR, BROWN,

PACKARD & PECKHAM,

Attorneys for Petitioner.

JOHN S. MILLER,

EDWARD O. BROWN,

CHARLES L. COBB,

PIERCE BUTLER &

W. A. T. SWEATMAN,

Of Counsel.

29 STATE OF ILLINOIS,
County of Lake, United States of America,
Northern District of Illinois, ss:

Thomas Kelly, being duly sworn, deposes and says:

I am the petitioner above named and have signed the foregoing petition. I have read the said foregoing petition and I know the contents thereof. The same is true except as to the matters therein stated to be alleged on information and belief, and as to these matters I believe the same to be true. The said petition and each part thereof is true to the best of my knowledge, information and belief. No previous application for the writ of habeas corpus and no previous application for the writ of certiorari has been made.

THOS. KELLY.

Subscribed and sworn to before me this 12th day of November, A. D., 1915.

[SEAL.]

BERT THOMPSON,

Notary Public.

30 & 31

EXHIBIT A.

Mittimus.

Before Lewis F. Mason, United States Commissioner for the Northern District of Illinois.

In the Matter of the Application for the Extradition of THOMAS KELLY, a Fugitive from Justice under the Treaties between the United States and Great Britain.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

The President of the United States of America to the Marshal of the Northern District of Illinois, and to his Deputies, or to any or either of them, and to the Keeper of the County Jail of the County of Lake, at Waukegan, in the State of Illinois, Greeting:

Whereas, the above named Thomas Kelly has been arrested on the oath of Horace D. Nugent, His Britannic Majesty's Consul General, at Chicago, Illinois, United States of America, for having on or about the 26th day of March, A. D. 1915, and at other times between the 1st day of May, 1913, and the 1st day of May, 1915, at Winnipeg in the Province of Manitoba, in the Dominion of Canada, in the domain of His Britannic Majesty, and within his jurisdiction, committed the crimes of

1. Perjury.
2. Obtaining money by false pretences.
3. Larceny or embezzlement, and the obtaining of money, knowing the same to have been embezzled, stolen or fraudulently obtained.

That the said Thomas Kelly at Winnipeg, in the Province of Manitoba, in the Dominion of Canada, in the domain of His Britannic Majesty, did on or about the 26th day of March, A. D. 1915, unlawfully commit the crime of perjury by swearing in a judicial proceeding, to-wit, before the Public Accounts Committee of

32 the Legislative Assembly of the Province of Manitoba, in words to the effect that the proportions in which the ingredients were in the concrete in the caissons of the new parliament buildings at Winnipeg in Manitoba, constructed by Thomas Kelly and Sons, were one, two and four, or one and six, one of cement, two of sand and four of broken stone, and that the amount of cement was a little over a barrel and one-half in each cubic yard of concrete in said caissons, such assertion being then and there known to the said Thomas Kelly to be false and being intended by him to mislead the Committee, contrary to the statute in such case provided.

That said Thomas Kelly was also there guilty of the crime of obtaining money by false pretences; that between the 16th day of July, 1913, and the 1st day of January, A. D. 1915, at Winnipeg aforesaid, in the Province of Manitoba, in the Dominion of Canada, in the domain of His Britannic Majesty, the said Thomas Kelly did

unlawfully obtain for the firm of Thomas Kelly and Sons, from the provincial officers of the Province of Manitoba, having the care, custody, control and disbursing of public funds, with intent to defraud His Majesty the King in the right of the Province of Manitoba in the Dominion of Canada, the sum of, to-wit, One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00); that he obtained during the period aforesaid Seven Hundred and Seventy-nine Thousand Nine hundred and Eighty-seven Dollars (\$779,987.00) of the moneys of the King on account of pretended extra work done and materials furnished in construction of caissons for the new parliament buildings at Winnipeg, upon false and fraudulent representations and statements that Thomas Kelly and Sons had put in upwards of Thirty-five Thousand (35,000) cubic yards of reinforced concrete, used One Million Two Hundred and Thirteen Thousand (1,213,000) feet of lumber, and Seven Hundred and Ninety-seven and Five-tenths (797-5/10ths) tons of iron rings and bolts, and that the fair and reasonable value for the concrete was Twelve Dollars (\$12.00) per cubic yard and for excavating Seven Dollars (\$7.00) per cubic yard, Forty Dollars (\$40.00) per thousand feet for the lumber, and One Hundred and Forty Dollars (\$140.00) per ton for the iron rings and bolts, the said Thomas Kelly then and there well knowing the fact to be that he had not put in said caissons to exceed Twenty-three Thousand One Hundred and Fifteen (23,115) cubic yards of concrete, or used to exceed, to-wit, One Hundred Thousand (100,000) feet of lumber, or, to-wit, Forty (40) tons of iron rings and bolts, and that the fair and reasonable cost and value of said extra work done and materials furnished, including a Ten per cent. (10%) profit to said contractors, did not then and there exceed Ninety-nine Thousand Two Hundred and Ninety-two Dollars and Fifty Cents (\$99,292.50); that said moneys, and other moneys, were so obtained by said false pretences and other false pretences, with intent to defraud His Majesty the King in the right of the Province of Manitoba, contrary to the laws of the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty.

That said Thomas Kelly, between the 1st day of May, 1913, and the 1st day of May, 1915, at Winnipeg, was also guilty of the crime of larceny or embezzlement, and the obtaining of money, knowing the same to have been embezzled, stolen or fraudulently obtained, and at the said place and times did steal and embezzle and did also unlawfully receive valuable securities or other property belonging to His Majesty the King in the right of the Province of Manitoba which had theretofore been embezzled, stolen or fraudulently obtained by means of an unlawful and fraudulent conspiracy, entered into between said Thomas Kelly, Sir Rodmond P. Roblin, then and there Premier of the Province of Manitoba, Walter H. Montague, then and there Minister of Public Works, James H. Howden, then and there Attorney General, George R. Coldwell, then and there Acting Minister of Public Works and Minister of Education, R. M. Simpson, Victor W. Horwood, then and there Provincial Architect, and others, to defraud His Majesty the King in the right of the Province of Manitoba out of large sums of money by means of false and fraudu-

lent contracts for extras in the construction by the firm of Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, of the new parliament buildings at Winnipeg, Manitoba, and by false and fraudulent estimates and statements of the amount and quantity of labor and materials necessary to make the changes desired, and false and fraudulent and exorbitant values for the same, and that by means of such false and fraudulent scheme of fraud and deception, entered into, participated in and carried out by said parties, said Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, fraudulently and feloniously obtained of the moneys of the King the sum of, to-wit, One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000) in fraud of His

33 Majesty the King in the right of the Province of Manitoba and contrary to the laws of the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty.

Said crimes of perjury, obtaining money by false pretences, larceny or embezzlement and the obtaining of money, knowing the same to have been embezzled, stolen or fraudulently obtained, being embraced in a treaty for the extradition of criminals between the Government of said Kingdom of Great Britain and Ireland, pertaining also to the Dominion of Canada, a part of His Britannic Majesty's dominion, and the Government of the United States of America, concluded and signed at Washington, on the 9th day of August, 1842, the Supplemental Treaty concluded and signed July 12th, 1889, and the Supplemental Treaty concluded and signed December 13th, 1900, and

Whereas, an examination of the charges against said Thomas Kelly has been had before me, Lewis F. Mason, a United States Commissioner for the Northern District of Illinois, specially authorized by order of the District Court to perform all the duties of a Commissioner under the extradition laws and treaties of the United States, and it appearing to me, the said Commissioner, that there are sufficient grounds to believe said Thomas Kelly guilty of the crimes charged, and it being hereby found and adjudged that said Thomas Kelly is guilty as charged, now, therefore, in the name and by the authority aforesaid,

These are to command you, the Marshal, as aforesaid, to commit the said Thomas Kelly to the custody of the Keeper of the Jail of said Lake County, Illinois, and to leave with the Keeper of the Jail a certified copy of this writ, and to command you, the Keeper of the said Jail, to receive and keep the said Thomas Kelly to abide the order of the Secretary of State of the United States.

Witness my hand and seal this 11th day of November, A. D. 1915.

[SEAL.]

LEWIS F. MASON,

United States Commissioner for the Northern District of Illinois, and a Commissioner Duly Authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from Justice of a Foreign Government under Treaty or Convention between this and Foreign Government.

34

EXHIBIT B.

(Copy.)

Before Lewis F. Mason, Esq., United States Commissioner, etc.

In the Matter of the Application for the Extradition of THOMAS KELLY under the Treaties between the United States and Great Britain.

UNITED STATES OF AMERICA.

Northern District of Illinois, City of Chicago, ss:

Lewis E. Bernays, His Britannic Majesty's Vice-Consul General at Chicago, Illinois, United States of America, being first duly sworn, doth depose and say upon information and belief.

That one Thomas Kelly has within the period of, to-wit, one year prior to the date hereof, been guilty of the crime of obtaining money under false pretences; also, second, has within the period of, to-wit, one year prior to the date hereof, been guilty of the crime of receiving money, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained; and, third, has, within one year prior to the date hereof, to-wit, the 26th day of March, 1914, been guilty of the crime of perjury, in the Province of Manitoba, Dominion of Canada, in his Britannic Majesty's domain, and,

That warrants have been issued by the proper authorities of the Province of Manitoba, Dominion of Canada, and within the jurisdiction — his Britannic Majesty's domain for Thomas Kelly, for the crime of obtaining money under false pretences, also for receiving money, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained, also for perjury, as this affiant is informed and believes.

35 That said Thomas Kelly is guilty of the indictable offenses of obtaining money under false pretences, also of receiving moneys, valuable securities or other property, knowing the same to have been stolen, embezzled or fraudulently obtained, also of perjury.

That the said Thomas Kelly is a fugitive from Justice from the Province of Manitoba, Dominion of Canada, and is now within the territory of the United States, as this affiant is informed.

That the offenses of which the said Thomas Kelly is charged are offenses within the treaties between the United States and Great Britain, and

That this deponent's information and belief is stated upon telegraphic communications from the Attorney General and Police Authorities of the Province of Manitoba, Dominion of Canada, to the local authorities requesting the arrest of said Thomas Kelly;

That a warrant has been issued for the apprehension and arrest of the said Thomas Kelly for said extraditable offenses.

(Signed)

LEWIS A. BERNAYS.

Subscribed and sworn to before me this second day of October, 1915.

(Signed)

LEWIS F. MASON,

United States Commissioner for the Northern District of Illinois and Commissioner Duly Authorized by the District Court of the United States for the Northern District of Illinois to Act as Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Government under a Treaty or Convention between this and any Foreign Government.

36 & 37

EXHIBIT C.

Provisions of the Criminal Code of Canada Defining Theft Charged in Paragraph Fourth of the Complaint Herein.

347. Theft Defined.—Theft or stealing is the act of fraudulently and without color of right taking, or fraudulently and without color or right co-verting to the use of any person, anything capable of being stolen, with intent,—

(a) To deprive the owner, or any person having any special property or interest therein, temporarily, or absolutely, of such thing, or of such property or interest; or,

(b) To pledge the same or deposit it as security; or,

(c) To part with it under a condition as to its return which the person parting with it may be unable to perform; or,

(d) To deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion.

2. Theft is committed when the offender moves a thing or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it.

3. The taking or conversion may be fraudulent, although effected without secrecy, or attempt at concealment.

4. It is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting. 55-56 V., c. 29, s. 305.

(Endorsed:) Filed Nov. 13, 1915, T. C. MacMillan, Clerk.

38

And on to-wit: the fifteenth day of November, 1915, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, Judge of said Court, appears the following entry to-wit:

No. 32288.

In the Matter of the Petition of THOMAS KELLY for Writs of Habeas Corpus and Extradition.

This cause coming on to be heard upon the petition of said Thomas Kelly heretofore filed herein, for writs of habeas corpus and certiorari, John S. Miller and Charles L. Cobb appearing for said petitioner, and Almon W. Bulkley and Claire E. More appearing for the Complainant in the said extradition proceedings in said petition referred to, Horace D. Nugent, His Britannic Majesty's Consul General at Chicago, the United States Marshal in opposition thereto, and after hearing the arguments of counsel, it is ordered that the writ of habeas corpus directed to the said John J. Bradley, United States Marshal for the Northern District of Illinois, commanding herein as is prayed for in said petition, and returnable in and before this Court on the 19th day of November, 1915, at ten o'clock A. M. do forthwith issue out of this court; and that the writ of certiorari directed to the said Lewis F. Mason, Esq., United States Commissioner, as prayed for in said petition, and returnable on the 19th day of November, 1915, at 10 o'clock A. M. do forthwith issue out of this court.

39 And on to-wit: the fifteenth day of November, 1915, a Writ of Habeas Corpus issued out of the clerk's office of said Court, directed to John J. Bradley, United States Marshal for the Northern District of Illinois. Said Writ together with the return thereon endorsed is in the words and figures following to-wit.

40 DISTRICT COURT OF THE UNITED STATES OF AMERICA.
Northern District of Illinois, Eastern Division, ss:

The United States of America to John J. Bradley, United States Marshal for the Northern District of Illinois, Greeting:

You are hereby commanded to have the body of Thomas Kelly, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said Thomas Kelly, shall be called or charged, before our Judges of our District Court of the United States, for the Northern District of Illinois, Seventh Judicial Circuit, now sitting in the Court Rooms of our said District Court, Federal Building, in the City of Chicago, in said District, on Friday morning November 19, 1915 at 10 A. M. to be dealt with according to law; and have you then and there this writ, with a return thereon of your doings in the premises.

To the Marshal of the Northern District of Illinois to execute.

Witness, the Hon. Kenesaw M. Landis, Judge of said Court, at Chicago, aforesaid, this 15th day of November in the year of our Lord one thousand nine hundred and fifteen and of our Independence the 140th.

[SEAL.]

T. C. MACMILLAN, *Clerk*,
By JOHN H. R. JAMAR, *Deputy Clerk*.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

In the District Court Thereof.

THOMAS KELLY

vs.

JOHN J. BRADLEY, U. S. Marshal for the Northern District of Illinois,
 and ELVIN J. GRIFFIN, Keeper of the Jail at Lake County,
 Illinois.

To the Honorable Kenesaw M. Landis, Judge of the District Court of
 the United States for the Northern District of Illinois:

In obedience to the within writ directed to the undersigned we
 hereby produce the body of Thomas Kelly as within directed and
 returned, and that he is held in the custody of the undersigned
 pursuant to the Mittimus or Warrant of Commitment issued by
 Lewis F. Mason, United States Commissioner for the Northern Dis-
 trict of Illinois, and a Commissioner duly authorized by the District
 Court of the United States for the Northern District of Illinois, to act
 as a Commissioner under the laws of the United States concerning
 the extradition of fugitives from Justice of a Foreign Government
 under treaty or convention between this and Foreign Government,
 a copy of which is hereto annexed and made a part of this return.

JOHN J. BRADLEY,

*United States Marshal of the
 Northern District of Illinois.*

ELVIN J. GRIFFIN,

*Keeper of the Jail at
 Lake County, Illinois.*

42 Before Lewis F. Mason, United States Commissioner for the
 Northern District of Illinois.

In the Matter of the Application for the Extradition of THOMAS
 KELLY, a Fugitive from Justice, under the Treaties Between
 the United States and Great Britain.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division:

The President of the United States of America to the Marshal of
 the Northern District of Illinois and to his Deputies, or to any or
 either of them, and to the Keeper of the County Jail of the
 County of Lake, at Waukegan, in the State of Illinois, Greeting:

Whereas, the above named Thomas Kelly has been arrested on the
 oath of Horace D. Nugent, His Britannic Majesty's Consul General at
 Chicago, Illinois, United States of America, for having on or about the
 26th day of March, A. D. 1915, and at other times between the 1st
 day of May, 1913, and the 1st day of May, 1915, at Winnipeg in
 the Province of Manitoba, in the Dominion of Canada, in the

domain of His Britannic Majesty, and within his jurisdiction, committed the crimes of

1. Perjury.

2. Obtaining money by false pretences.

3. Larceny or Embezzlement, and obtaining of money, knowing the same to have been embezzled, stolen or fraudulently obtained.

43 That the said Thomas Kelly at Winnipeg, in the Province of Manitoba, in the Dominion of Canada, in the domain of His Britannic Majesty, did on or about the 26th day of March, A. D. 1915, unlawfully commit the crime of perjury by swearing in a judicial proceeding to-wit, before the Public Accounts Committee of the Legislative Assembly of the Province of Manitoba, in words to the effect that the proportions in which the ingredients were in the concrete in the caissons of the new parliament buildings at Winnipeg in Manitoba, constructed by Thomas Kelly and Sons, were one, two and four, or one and six, one of cement, two of sand and four of broken stone, and that the amount of cement was a little over a barrel and one-half in each cubic yard of concrete in said caissons, such assertion being then and there known to the said Thomas Kelly to be false, and being intended by him to mislead the Committee, contrary to the statute in such case provided.

That the said Thomas Kelly was also there guilty of the crime of obtaining money by false pretences; that between the 16th day of July, 1913, and the 1st day of January, A. D. 1915, at Winnipeg aforesaid, in the Province of Manitoba, in the Dominion of Canada, in the domain of His Britannic Majesty, the said Thomas Kelly did unlawfully obtain for the firm of Thomas Kelly and Sons, from the provincial officers of the Province of Manitoba, having the care, custody, control and disbursing of public funds, with intent to defraud His Majesty the King in the right of the Province of Manitoba in the Dominion of Canada, the sum of to-wit, one million two hundred and fifty thousand dollars (\$1,250,000.00); that he obtained during the period aforesaid seven hundred seventy-nine thousand nine hundred and eighty-seven dollars (\$779,987.00) of the moneys of the King on account of pretended extra work done

and materials furnished in the construction of caissons for

44 the new parliament buildings at Winnipeg, upon false and fraudulent representations and statements that Thomas Kelly and Sons had put in upwards of thirty-five thousand (35,000) cubic yards of reinforced concrete, used one million two hundred and thirteen thousand (1,213,000) feet of lumber, and seven hundred and ninety seven and five tenths (797-5/10ths) tons of iron rings and bolts, and that the fair and reasonable value for the concrete was twelve dollars (\$12.00) per cubic yard and for excavating seven dollars (\$7.00) per cubic yard, forty dollars (\$40.00) per thousand feet for the lumber, and one hundred and forty dollars (\$140.00) per ton for the iron rings and bolts, the said Thomas Kelly then and there well knowing the fact to be that he had not put in said caissons to exceed twenty-three thousand one hundred and fifteen (23,115) cubic yards of concrete, or used to exceed, to-wit: one

hundred thousand (100,000) feet of lumber, or, to-wit: forty (40) tons of iron rings and bolts, and that the fair and reasonable cost and value of said extra work done and materials furnished, including a ten per cent (10%) profit to said contractors, did not then and there exceed ninety-nine thousand two hundred and ninety-two dollars and fifty cents (\$99,292.50); that said moneys, and other moneys, were so obtained by said false pretences and other false pretences with intent to defraud His Majesty the King in the right of the Province of Manitoba, contrary to the laws of the Province of Manitoba, in the Dominion of Canada in the Domain of His Britannic Majesty.

That said Thomas Kelly, between the 1st day of May, 1913, and the 1st day of May, 1915, at Winnipeg, was also guilty of the crime of larceny or embezzlement, and the obtaining of money, knowing the same to have been embezzled, stolen or fraudulently obtained, and at the said place and times did steal and embezzle and did also unlawfully receive valuable securities or other property
45 belonging to His Majesty the King in the right of the Province of Manitoba which had theretofore been embezzled, stolen or fraudulently obtained by means of an unlawful and fraudulent conspiracy entered into between said Thomas Kelly, Sir Rodmond P. Roblin, then and there Premier of the Province of Manitoba, Walter H. Montague, then and there Minister of Public Works, James H. Howden, then and there Attorney General, George R. Coldwell, then and there Acting Minister of Public Works and Minister of Education, R. M. Simpson, Victor W. Horwood, then and there Provincial Architect, and others, to defraud His Majesty the King in the right of the Province of Manitoba, out of large sums of money by means of false and fraudulent contracts for extras in the construction by the firm of Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, of the new parliament buildings at Winnipeg, Manitoba, and by false and fraudulent estimates and statements of the amount and quantity of labor and materials necessary to make the changes desired, and false and fraudulent and exorbitant values for the same, and that by means of such false and fraudulent scheme of fraud and deception, entered into, participated in and carried out by said parties, said Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, fraudulently and feloniously obtained of the moneys of the King the sum of, to-wit: one million two hundred and fifty thousand dollars (\$1,250,000.00) in fraud of His Majesty the King in the right of the Province of Manitoba and contrary to the laws of the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty.

Said crimes of perjury, obtaining money by false pretences, larceny or embezzlement and the obtaining of money, knowing
46 the same to have been embezzled, stolen or fraudulently obtained, being embraced in a treaty for the extradition of criminals between the Government of said Kingdom of Great Britain and Ireland, pertaining also to the Dominion of Canada, a part of His Britannic Majesty's domain, and the Government of the United

States of America, concluded and signed at Washington, on the 9th day of August, 1842, the Supplemental Treaty concluded and signed July 12th, 1880, and Supplemental Treaty concluded and signed December 13th, 1900, and

Whereas, and examination of the charges against said Thomas Kelly has been had before me, Lewis F. Mason, a United States Commissioner for the Northern District of Illinois, specially authorized by order of the District Court to perform all the duties of a Commissioner under the extradition laws and treaties of the United States, and it appearing to me, the said Commissioner, that there are sufficient grounds to believe said Thomas Kelly guilty of the crimes charged, and it being hereby found and adjudged that said Thomas Kelly is guilty as charged, Now, Therefore, in the name and by the authority aforesaid,

These are to command you, the Marshal, as aforesaid, to commit the said Thomas Kelly to the custody of the Keeper of the Jail of said Lake County, Illinois, and to leave with the Keeper of said Jail a certified copy of this writ, and to command you, the Keeper of the said Jail, to receive and keep the said Thomas Kelly to abide the order of the Secretary of State of the United States.

47 Witness my hand and seal this 11th day of November, A. D. 1915.

LEWIS F. MASON,

United States Commissioner for the Northern District of Illinois and a Commissioner Duly Authorized by the District Court of the United States for the Northern District of Illinois to Act as a Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from Justice of a Foreign Government under Treaty or Convention Between This and Foreign Government.

48-49 (Endorsed on the back :) Original. Gen. No. 32288. "By the Habeas Corpus Act." District Court of the United States, Northern District of Illinois, Eastern Division. In the Matter of the Petition of Thomas Kelly for a Writ of Habeas Corpus. Writ of Habeas Corpus. Returnable Nov., 19, 1915, T. C. MacMillan, Clerk. John S. Miller, Chas. L. Cobb, Att'y- for Petitioner. Filed Nov. 19, 1915. T. C. MacMillan, Clerk.

50 And on the same day to-wit: the fifteenth day of November, 1915, a certain Writ of Certiorari issued out of the clerk's office of said Court, directed to Lewis F. Mason, Esq., United States Commissioner for the Northern District of Illinois, and duly appointed and authorized by the District Court of the United States for the Northern District of Illinois, to act as Commissioner under the laws of the United States concerning the extradition of fugitives from the justice of a foreign country under a treaty between the United States and any foreign country. Said Writ of Certiorari, together

with the return thereon endorsed and copies of the testimony and all the evidence offered and received by the Commissioner and made a part of the return to the said Writ, are in words and figures following to-wit:

51 The President of the United States to Lewis F. Mason, Esq., United States Commissioner for the Northern District of Illinois and duly appointed and authorized by the District Court of the United States for the Northern District of Illinois to act as Commissioner, under the laws of the United States concerning the extradition of fugitives from the justice of a foreign country under a treaty between the United States and any foreign country, Greeting:

We being informed that there was lately pending before you a suit or complaint by or of Horace D. Nugent, His Britannic Majesty's Consul General at Chicago against Thomas Kelly, in proceedings for the extradition of said Thomas Kelly to the Dominion of Canada; and we being willing for sufficient reasons shown by the petition of the said Thomas Kelly, sworn to on the 12th day of November, 1915, that the proceedings concerning the matters described in, and those to which reference is made in, said petition should be certified and sent by the said Lewis F. Mason, Esq., United States Commissioner for the Northern District of Illinois, to the District Court of the United States for the Northern District of

Illinois, you are hereby commanded to certify and send to the
52 District Court of the United States in and for the Northern District of Illinois, Eastern Division, on the 19th day of November, 1915, at 10:00 o'clock in the morning of that day, or as soon thereafter as counsel can be heard, your proceedings concerning the matters described in, and those to which reference is made in, said petition and concerning the application for the extradition of Thomas Kelly, together with the testimony and other evidence offered and received before you with all things touching the same and the evidence, both oral and documentary, offered and received before you therein, as fully and as entirely as it remains before you, by whatsoever names the parties may be called in said proceedings, together with this writ, that said court may cause to be done what of right ought to be done in the premises.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, the 15th day of November, 1915.

T. C. MACMILLAN, *Clerk,*
By JOHN H. R. JAMAR,
*Deputy Clerk of the District Court of
the United States for the Northern
District of Illinois.*

[SEAL.]

The foregoing writ is allowed. Nov. 15, 1915.

K. M. LANDIS,
*United States District Judge,
Northern District of Illinois.*

Chicago, the 15th day of November, 1915.

53

Return of Certiorari.

I, Lewis F. Mason, United States Commissioner for the Northern District of Illinois, duly appointed and authorized by the District Court of the United States for the Northern District of Illinois to act as commissioner under the laws of the United States concerning the extradition of fugitives from the justice of a foreign country under the treaties between the United States and foreign countries, do

Hereby make return of the writ of certiorari issued by the clerk of the District Court on the 15th day of November, 1915, in the matter of the petition of Thomas Kelly for a writ of Habeas Corpus, and for return do

Hereby certify to said District Court all the proceedings concerned in the matters described and to which reference is made concerning the application for the extradition of Thomas Kelly, together with copies of the testimony and all the evidence offered and received by me attaching the same both oral and documentary, and I herewith attach copies as part of the return of this writ of said proceedings, together with this writ, in full compliance thereof.

Witness my hand and seal this 16th day of November, A. D. 1915.

[SEAL.]

LEWIS F. MASON,
United States Commissioner.

(Endorsed:) Filed Nov. 16, 1915. T. C. MacMillan, Clerk.

54

No. 32288.

In re THOMAS KELLY.

Before Me, Lewis F. Mason, United States Commissioner, Northern District of Illinois.

In the Matter of the Application for the Extradition of THOMAS KELLY Under the Treaties Between the United States and Great Britain.

Certificate to the Secretary of State of the United States and Record.

55 & 56 Part of Return to Writ of Certiorari in Re Petition Thomas Kelly, being a true copy of the testimony and Exhibits and papers together with true copies of Complaint, Warrant and Mitimus.

[SEAL.]

LEWIS F. MASON,
U. S. Commissioner.

Dated November 16, 1915.

57 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

To the Honorable Robert Lansing, Secretary of State of the United States:

I, Lewis F. Mason, a United States Commissioner for the Northern District of Illinois, specially authorized and empowered to perform all the duties of a United States commissioner under the extradition laws and treaties of the United States, do hereby certify the proceedings in the above entitled matter to be as follows:

On the 15th day of October, 1915, Horace D. Nugent, Consul General for his Britannic Majesty, in Chicago, made complaint under oath and in writing before me charging Thomas Kelly with having on or about the 26th day of March, 1915, at Winnipeg in the Dominion of Canada, committed the crime of perjury, and that between the 16th day of July, 1913, and the 1st day of January, 1915, at Winnipeg, within the jurisdiction of the Kingdom of Great Britain committed the crime of obtaining money by false pretences, and between the 1st day of May, 1913, and the 1st day of May, 1915, at Winnipeg within the jurisdiction of the Kingdom of Great Britain, committed the crime of stealing money, valuable securities or other properties belonging to His Majesty the King, in the Province of Manitoba, and also of unlawfully receiving money, valuable securities or other properties belonging to His Majesty the King, in the right of the Province of Manitoba, which had heretofore been embezzled, stolen or fraudulently obtained by means of an unlawful and fraudulent conspiracy entered into between said Thomas Kelly, Sir Rodmond P. Roblin, Walter H. Montague, James H. Howden, George R. Coldwell, R. M. Simpson, Victor W. Harwood and others, to defraud His Majesty the King, and said crimes being crimes provided for in the treaties for the extradition of criminals between the Government of the said Kingdom of Great Britain and the Government of the United States, and the said Thomas Kelly had fled from the said Kingdom of Great Britain and was within the said Northern District of Illinois. Accordingly thereupon, on the 15th day of October, 1915, I issued a warrant for the apprehension of the said Thomas Kelly, said warrant being directed to the United States Marshal for the Northern District of Illinois, and any Marshal or his deputies in the United States, and the said Thomas Kelly being arrested by the Marshal for the Northern District of Illinois, was on the 15th day of October, 1915, arraigned before me. Thereafter on the 15th day of October, upon motion of his counsel hearing on said complaint was continued until the 21st day October, at the hour of 11:00 A. M., and the respondent Thomas Kelly was committed to the Lake County jail at Waukegan, Illinois, without bond pending such continuance. Thereafter on various dates hearing was had upon said complaint and evidence was offered and received on behalf of the demanding government together with the exhibits and depositions, and evidence and exhibits were offered on behalf of the respondent, Thomas Kelly.

On the 11th day of November, 1915, at my office in the City of Chicago, and the district aforesaid, the matter came on for final hearing and disposition, and there appearing for the government for the Kingdom of Great Britain, Hon. R. A. Bonnar, Attorney General for Winnipeg, Canada, A. W. Bulkley, Esq., and Clair E. More, Esq., of Chicago, and for the respondent Mr. John S. Miller, of Chicago, Mr. W. A. T. Sweatman of Winnipeg, Canada, Mr. Pierce Butler of St. Paul, Mr. Robert E. Crowe and Mr. Charles E. Barrett, of Chicago, Illinois, and it appearing to my satisfaction that there was sufficient evidence to sustain the charges under the provisions of the said treaties and that the said Thomas Kelly is guilty of the crimes of—

1. Perjury. 2. Obtaining money by false pretenses. 3. Larceny or embezzlement, and the obtaining of money knowing the same to have been embezzled, stolen or fraudulently obtained as charged in the complaint, I accordingly ordered by commitment dated the 11th day of November, 1915, that he be committed to jail in the County of Lake at Waukegan, Illinois, there to remain and abide the order of the Secretary of State of the United States.

Hereto I annex a copy of the testimony, depositions and exhibits taken and considered at said hearing before me, and I hereby certify said copy to be a true copy of the said testimony, depositions and exhibits.

In witness whereof, I have hereunto affixed my Hand and Seal at the City of Chicago, this 11th day of November, A. D. 1915.

[SEAL.]

LEWIS F. MASON,

United States Commissioner for the Northern District of Illinois and a Commissioner Duly Authorized by the District Court of the United States for the Northern District of Illinois to Act as a Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from Justice of a Foreign Government under Treaty or Convention Between This and Foreign Government.

- 59 In the Matter of the Application for the Extradition of
THOMAS KELLY under the Statutes Between the United
States and Great Britain.

*Transcript of Proceedings Before Lewis F. Mason, United States
Commissioner, Beginning October 15, 1915, in Court Room 603,
Federal Building, Chicago, Illinois.*

Present:

Hon. R. A. Bonnar, A. W. Bulkley and Clair E. More, Appearing
on Behalf of the British Government.

John S. Miller, W. S. Forrest, Pierce Butler, Robert E. Crowe,
Charles E. Barrett, Counsel for Respondent.

Commissioner Mason: Did you prepare a copy of the new com-
plaint for Mr. Forrest?

Mr. Bulkley: Yes, I have a copy of it here.

Commissioner Mason: Mr. Forrest, there has been a new com-
plaint filed.

Mr. Forrest: There has been an amended complaint?

Commissioner Mason: An amended complaint—well, the ques-
tion of procedure, I don't know. There has been a complaint filed.

Mr. Forrest: What became of the original complaint?

Mr. Bulkley: We filed a new complaint and have a new war-
rant issued, and we will abandon the other.

Mr. Forrest: Well, the record shows that—

Commissioner Mason: It shows that the first complaint is dis-
missed then on motion for the counsel for the British Consul. New
complaint filed, warrant issued and placed in the hands of the Mar-
shal. Will you waive the reading of the warrant, Mr. Forrest?

Mr. Forrest: Yes, I will waive the reading of the warrant.

Commissioner Mason: It follows, I suppose—

Mr. Forrest: But I do not want to waive the reading of anything
else.

Commissioner Mason: All right. The first complaint is dis-
missed. Warrant returned.

Mr. Bulkley: Now, I give you a copy of the warrant and the
complaint.

Mr. Forrest: Yes. Now, may I make a suggestion? Before this
evidence is read, or before the complaint is read, I suggest that we
adjourn, and let me take that and read it over and come back and
then we can proceed more regularly and expeditiously. Say we
adjourn until tomorrow morning at ten o'clock, and then, in the
meanwhile, I can read the copy of that during the day. I wish to
make certain objections, if the court please. Otherwise I will be
continually interrupting.

Commissioner Mason: Yes. Well, tomorrow I have a very busy
day. You could make a general objection, couldn't you?

Mr. Forrest: Well, I don't know whether that is sufficient.

Mr. Bulkley: Well, if you will let this over until Monday or

Tuesday and divide the time when you can have the original——

Mr. Forrest: I will have it part of the time and you will have it part of the time.

Mr. Bulkley: All right. I am trying to make some copies so as to furnish you with it, but we were crowded for time and when we came down we only had one copy that was prepared and complete.

Mr. Sweatman: I have not seen the warrants or any-
60 thing yet.

Mr. Forrest: Well, let it go until Tuesday then, if the court please, if that day is satisfactory to the court.

Commissioner Mason: Yes.

Mr. Bulkley: I want, before putting it over until that time, I want to ask if there is going to be any denial of identity, because I have witnesses here now, and I want the record to show if there is——

Mr. Forrest: May I just set forth my true inwardness? There has been no consultation among the counsel or between the counsel and the defendant with reference to any question in the case.

Commissioner Mason: I suppose you were probably waiting until the first gun was fired.

Mr. Sweatman: We want to see what they charge.

Mr. Forrest: What they wish to know now is whether or not we are going to require them to prove that the Thomas Kelly named in the warrant and the Thomas Kelly named in the complaint—or named in the testimony, is the same Thomas Kelly. Now, there is a point there——

Mr. Bulkley: We will not embarrass you.

Mr. Forrest: Well, we have no notion that he is not that man, but you see I have turned around——

Commissioner Mason: Well, you have the witnesses here today and you won't have them here on next Tuesday or Wednesday, will you?

Mr. Bulkley: I can call a witness now and ask two or three questions and prove that.

Commissioner Mason: All right, go ahead.

Mr. Forrest: Very well.

Then any motion which I may make to dismiss the proceedings with reference to the want, you know, of jurisdiction of the court, and so forth, is subject to that, will appear before that.

Mr. Bulkley: Yes.

Mr. Forrest: In writing up the record.

Mr. Bulkley: Oh, yes, yes.

Mr. Forrest: All right.

60½

October 15, 1915, 10 o'clock a. m.

JOHN C. McRAE, called as a witness on behalf of petitioner, having been first duly sworn, testified as follows:

Direct examination by Mr. Bulkley.

Q. You may state your name?

A. John C. McRae.

Q. Where do you reside. Mr. McRae?

A. Winnipeg, Manitoba, Canada.

Q. Have you any official position there?

A. I have.

Q. What is it?

A. Commissioner of Police of Manitoba.

The Commissioner: A little bit louder. Mr. Forrest does not get it.

Mr. Forrest: Chief of Police.

The Commissioner: Commissioner of Police.

Mr. Forrest: Commissioner of Police?

A. Yes.

Mr. Bulkley:

Q. Of the Province of Manitoba.

Q. Have you had come to your possession, as an officer, any warrants—

A. There have.

Q. —for one Thomas Kelly?

A. Yes.

Q. Are you familiar with the warrants contained in the complaint that have been filed here in this proceeding?

A. Yes, I am.

Q. What is that?

A. I am.

Q. Do you know the Thomas Kelly that is mentioned in those warrants and those proceedings?

A. I do.

Q. Is he here in the court room?

A. Yes.

Q. Is the gentleman that sits here——

A. Yes.

Q. —in the court room, the same Thomas Kelly who is named in these proceedings?

A. He is.

Q. Will you point out the Thomas Kelly?

61 A. That is Mr. Kelly there (indicating).

Mr. Forrest: Let the record show that he pointed out the respondent.

Mr. Bulkley: Yes, let the record show that he pointed out the respondent.

The Commissioner: All right.

Mr. Forrest: Is that what you call the party sought to be extradited here, the respondent?

The Commissioner: Yes, I think he is.

Mr. Bulkley:

Q. This Thomas Kelly is the one that has this suit here, is he?

A. He is, yes.

Mr. Bulkley: That is all.

The Commissioner: Is there any cross-examination, Mr. Forrest?

Mr. Forrest: No cross-examination. Mr. Butler has a suggestion to make, gentlemen, with reference to the date of the continuance.

Mr. Butler: I would prefer to have it continued to Thursday instead of Tuesday. Since we first spoke, I have recalled an appointment in St. Paul and Minneapolis on Tuesday, and it takes a night to get down here and guarding against any possibility that my matters there may run over into Wednesday, I suggest Thursday.

Mr. Bulkley: Now, there is one other thing that I want to prove by the witness that is here, and that is the authenticity of the Canadian Code. I think it is in proof here, but I am not at all certain of it.

Mr. Forrest: What is that, the identification of the books?

Mr. Bulkley: Yes, any objection to that, or will there be? I want to offer in evidence on the hearing certain sections of the Code. Will there be any objection to the authentication of the book?

Mr. Butler: Not if you have the Code here.

Mr. Forrest: If you have the Code here and if you state that that is the Code, that is satisfactory.

Mr. Bulkley: All right, that is satisfactory. That is enough.

Mr. Forrest: Now, what do you say to this suggestion of Mr. Butler's?

Mr. Bulkley: I have no objection.

Commissioner Mason: That is Thursday at ten o'clock?

Mr. Bulkley: Yes.

Mr. Butler: Make it eleven, or would you rather have it at ten?

Commissioner Mason: No, I would rather have it at eleven, because I have other matters to dispose of.

Mr. Butler: You would rather have it at eleven o'clock?

Commissioner Mason: Yes.

Mr. Bulkley: Well, I don't know about putting this off as long as Thursday.

Commissioner Mason: Mr. Bulkley said he didn't want it to go over quite so long.

Mr. Sweatman: You mean Mr. Bonnar.

Commissioner Mason: They have not said Thursday would be agreeable to them as yet, Mr. Forrest.

Mr. Forrest: Oh, yes. We will have to inconvenience Brother Bonnar a little bit anyhow, and I have an idea if this goes over to Thursday that we may have whatever testimony we have ready at that time, but I don't know about that.

Commissioner Mason: Thursday, October 21st, at eleven o'clock.

Mr. Bulkley: Yes, very well.

Mr. Forrest: Now, can I get the gentlemen on the other side to agree that the respondent may be admitted to bail in the meanwhile.

Mr. Bulkley: No, we haven't any right to do that.

Mr. Forrest: Yes, you have a right.

Mr. Bulkley: No, we have not. I wish we had, but we haven't.

Mr. Forrest: The Constitution says—or the Supreme Court has decided that the court has the right to admit to bail.

Mr. Bulkley: No, the Supreme Court has not decided that.

Commissioner Mason: I have been informed your respondent is very comfortably taken care of.

Mr. Forrest: Yes, your Honor, but I would like to call Mr. Bonnar's attention to something. I would like to have him step up here if he will. If the court please, what I would like to satisfy these other gentlemen on the other side of, as well as to satisfy yourself, is that Mr. Kelly never, at any time, intended to flee the jurisdiction of the United States, waiving the other question. Waiving the other question. This bears on that subject of bail. For example, Mr. Butler is here this morning. Mr. Kelly, the respondent, was arrested a week ago Friday, I believe, or Thursday.

62 Mr. Bulkley: Oh, what is the use of arguing that?

Mr. Forrest: A week ago Thursday. A week ago Sunday Mr. Butler called at my residence and left a brief and asked me whether I would look it over, he left with me a brief.

Commissioner Mason: The brief referred to by you in your argument a week ago on the question of bail, Mr. Forrest?

Mr. Forrest: No, your Honor. It is a brief on the entire case.

Commissioner Mason: Yes. You referred to it.

Mr. Forrest: Yes, I referred to it, but I did not have the full significance of it before me. It is elaborately prepared and it shows beyond peradventure that Kelly and his counsel, Mr. Butler, contemplated extradition proceedings at St. Paul, to which Mr. Kelly would be willing to respond.

Now, here is an analysis of all the Canadian laws, of all the Minnesota laws, and of the Decisions of the United States. Here is also an analysis of the writ of habeas corpus and the petition therefor, stating where the precedence may be found, and so forth.

Commissioner Mason: That was prepared then?

Mr. Forrest: I felt, you know, that this was one of the afterthoughts that I had, after the last debate about bail, which I should have had at the prior time.

Now, this, to me, if the court please, seems conclusive evidence that Mr. Kelly did not intend to flee the jurisdiction of the United States Courts. In other words, that he came here for the purpose of submitting to judicial proceedings here. Evidently he did wish to obey the process of the Royal Commission. Now, this bears only upon that subject of bail. Your Honor wants to know as to whether or not the man will be on hand to respond to any decision which your Honor may make in the premises. This looks to me like conclusive evidence that it is in good faith, and that it is perfectly safe to admit him to bail.

Commissioner Mason: This was prepared last summer, Mr. Forrest, was it?

Mr. Forrest: I don't know when it was prepared. It was handed to me, if the court please, a week ago.

Commissioner Mason: Well, it must have been prepared last summer. You mentioned it in your argument last week.

Mr. Forrest: Yes, it was handed to me in my house a week ago last Sunday. Here is my handwriting in front, and there is other handwriting there which I presume is Mr. Butler's. I don't know whose it is (indicating).

Commissioner Mason: The gist of the situation is this. Since the preparation of this, has he returned to Canada?

Mr. Forrest: No, he has not, but the question of bail here, if the court please, does not turn upon the question as to whether or not he wishes to evade any criminal process in Canada. The whole question of bail turns on the question as to whether or not it is probable that the respondent will be on hand to be surrendered in case the Government of the United States decides to surrender him.

Now, this, if the court please, it seems to me, is evidence bearing upon that aspect of the case.

Now, there is another thing. Now, I was thoroughly convinced of that; otherwise I would not have made the motion. I never did have a man on bail but one or represented a man, that fled, as I remember it, and I didn't get him out on bail. If I had the remotest suspicion that this man would flee, I would not make the motion, but I am convinced that he will not.

Mr. Butler: Suppose that application goes over until Thursday?

Commissioner Mason: Well, Mr. Forrest has raised it now, and he raised it on the first hearing, and I had to hold against him. This was referred to before, and this don't, to my way of looking at it, Mr. Forrest, this don't add anything to your former argument, for this reason: He is admittedly in the United States; he has had plenty of opportunity to go back if he wanted to; prepared to make a fight to the limit before he would go back. Now, we don't know, after a final conclusion of this one way or the other, but what he may take other steps to prevent himself from going back there. Frankly, I don't think he would, but there has not been shown the special exigencies or urgency or the situation that arises that would make it one of those exceptional cases in which bail should be granted.

Mr. Forrest: Well, there has been no legal or physical necessity shown. Nothing like that has been shown, but I submit that this has been shown, if the court please, by the evidence here, that it is wholly unnecessary to keep the man in prison.

Now, what you want to know is as to whether or not he will be here at the time. I am thoroughly convinced he will be here, but, of course, as I said before, I don't know that he will be

63 here, because I can't know that he will be, but all the conversations with me,—and that is what weighs upon my mind—the implication here, they retained me to do so and so, and my retainer, and the way it runs, and they have here Mr. Butler, he is on hand, and he hands me this brief, and I can see that Mr. Butler has been preparing to do the same thing in Minnesota which I am retained to do here. I don't know how long it took Mr. Butler to prepare that, but it would take me fully a week.

Commissioner Mason: Oh, yes.

Mr. Forrest: If not longer. It looks to me as if there was two weeks' work there. He has the whole theory of the case elaborated,

What Canada will contend and what the defendant will contend and what the Minnesota law is and what the difference between the Minnesota law and the Canadian law.

Now, he was retained to do that and the man that retained him to do that evidently contemplated that this should be used in some proceeding, and the proceeding outlined there is a fight all the way through.

Now, then, you say what will be Mr. Kelly's attitude at the end of the fight. Well, if the court please, we have not arrived at that point yet, and what I am speaking about now is, bail pro tem. That is all I can say about it.

Commissioner Mason: Has the counsel any suggestions to make further?

Mr. Bulkley: It does not appeal to me, if your Honor please, that the argument of counsel has any weight in view of the law of the United States, and, further, the argument that he presents here with reference to having a lawyer preparing an extensive brief on extradition in Minnesota simply goes to show that he anticipated that Canada was going to demand his return and that he was getting ready to contest that extradition.

Now, then, Canada has demanded it, but did not happen to demand it while he was in Minnesota, and the law on extradition between here and Canada is the same in this jurisdiction as it is in Minnesota. The same Treaty——

Commissioner Mason: Yes.

Mr. Bulkley: —and the same law and the same facts, and what is incumbent now upon the United States Government is to have this man so that they can perform their Treaty obligations in case the Government decides, after a hearing to return him to Canada.

Now, I know of no way—it has been talked about, the power of the court to grant bail. The Supreme Court, in the Henkle case, did not say that the court had power——

Commissioner Mason: It said it would not say that it did not have power, as I remember it. Is that right?

Mr. Bulkley: That is it exactly. It has never passed upon the question as to whether the court had any power, and there is not any statute or any Act of Congress authorizing bail in any case.

Now, that is all the Supreme Court said in that case, and the only case that has ever been found is the one that was referred to the other day.

Mr. Forrest: The purpose of that decision is to leave the matter, as I take it, entirely to the discretion of the court below.

Commissioner Mason: Open, yes.

Mr. Bulkley: Now, I do not concede that the Commissioner has any authority to grant bail, particularly under the conditions existing in this case.

Commissioner Mason: In the Bingham case, I made an order that bail would be granted if a sufficient showing was made, and gave the respondent leave to make that showing, which they did not do, and therefore the bail was denied in that case.

The showing has been made here, by the argument of counsel,

without any evidence, and I do not see that there is anything that is new, that would change the order.

Mr. Butler: May I make this suggestion, your Honor? This complaint, on which Mr. Kelly is held, has just this moment been filed.

Commissioner Mason: Yes.

Mr. Butler: My understanding of the situation is this: Your Honor has correctly stated what the Supreme Court of the United States said in the Henkle case.

Now, Judge Hand, in the Mitchell case, held and said that the Supreme Court had held that there was power in the Circuit Court to admit to bail.

Now, my suggestion is this. I am answering the legal—simply to indicate our claims that the power is inherent in the court in a proper case to admit to bail. That, undoubtedly, is the law of this country. That there should be a proper showing, is also plain, and my suggestion is that the motion go over until—without decision—until
64 the matter comes up next Thursday, or until the matter be brought to the attention of the Commissioner again, with the right to make such showing as Mr. Kelly may be advised.

Commissioner Mason: That motion is always in order, I should say.

Mr. Butler: Very well, that, I think, would be a proper disposition this morning. I am quite sure that the gentlemen representing the other side have no disposition to be oppressive or unfair, and that it will not be regarded even by them as improper to invoke the laws of this country to see that the Treaty obligations are carried out; that there is no inference to be drawn against a man that is preparing for a lawsuit that he knows is about to come.

Commissioner Mason: Well, Mr. Forrest, we will adjourn then until next Thursday at eleven A. M.

Mr. Butler: How about getting hold of copies of these documents?

Commissioner Mason: This that is filed here with me today (indicating)?

Mr. Butler: Mr. More, can we arrange to take these to examine, and have these rapid fire men make copies of the whole thing?

Commissioner Mason: Yes. I will probably have to have printed copies made of it. Suppose I have printed copies made.

Mr. Butler: Who pays the expense, each man for his own copy?

Commissioner Mason: That is all paid by the British Government.

Mr. Bulkley: He has to make it anyway, so it is not adding anything to the expense.

Whereupon the further hearing adjourned to Thursday, October 21, A. D. 1915, at 11:00 o'clock, A. M.

64½

Complaint.

Before Lewis F. Mason, United States Commissioner, etc.

In the Matter of the Application for the Extradition of THOMAS KELLY under the Treaties between the United States and Great Britain.

UNITED STATES OF AMERICA,

Northern District of Illinois, City of Chicago, ss:

Horace D. Nugent, His Britannic Majesty's Consul General at Chicago, Illinois, United States of America, being first duly sworn upon his oath deposes and says that he is informed and believes, and thereupon states,

First. That one Thomas Kelly, late of Winnipeg in the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty, has been guilty of the following crimes:

1. Perjury.

2. Obtaining money by false pretenses.

3. Larceny or Embezzlement, and the obtaining of money, knowing the same to have been embezzled, stolen or fraudulently obtained.

Second. That he, the said Thomas Kelly, on or about the 26th day of March, A. D. 1915, at Winnipeg aforesaid, did unlawfully commit perjury by swearing in a judicial proceeding, to-wit, before the Public Accounts Committee of the Legislative Assembly of the Province of Manitoba, in words to the effect that the proportions in which the ingredients were in the concrete in the caissons of the new parliament buildings at Winnipeg in Manitoba, constructed by Thomas Kelly and Sons, were one, two and four, or one and six, one of cement, two of sand and four of broken stone, and that the amount of cement was a little over a barrel and one-half in each cubic yard of concrete in said caissons, such assertion being then and there known to the said Thomas Kelly to be false and being intended by him to mislead the Committee, contrary to the statute in such case provided.

65 Third. That said Thomas Kelly was also then and there guilty of the crime of obtaining money by false pretenses: that between the 16th day of July, 1913, and the 1st day of January, A. D. 1915, at Winnipeg aforesaid, the said Thomas Kelly did unlawfully obtain for the firm of Thomas Kelly and Sons, from the provincial officers of the Province of Manitoba, having the care, custody, control and disbursing of public funds, with intent to defraud His Majesty the King in the right of the Province of Manitoba in the Dominion of Canada, the sum of, to-wit, One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00); that he obtained during the period aforesaid Seven Hundred Seventy-nine Thousand Nine Hundred and Eighty-seven Dollars (\$779,987.00) of the moneys of the Province of Manitoba on account of the pretended extra work done and materials furnished in con-

struction of caissons for the new parliament buildings at Winnipeg, upon false and fraudulent representations and statements that Thomas Kelly and Sons had put in upwards of Thirty-five Thousand (35,000) cubic yards of reinforced concrete, used One Million Two Hundred and Thirteen Thousand (1,213,000) feet of lumber, and Seven Hundred and Ninety-seven and Five-tenths ($797\frac{5}{10}$) tons of iron rings and bolts, and that the fair and reasonable value for the concrete was Twelve Dollars (\$12.00) per cubic yard and for excavating Seven Dollars (\$7.00) per cubic yard, Forty Dollars (\$40.00) per thousand feet for the lumber, and One Hundred and Forty Dollars (\$140.00) per ton for the iron rings and bolts, the said Thomas Kelly then and there well knowing the fact to be that he had not put in said caissons to exceed Twenty-three Thousand One Hundred and Fifteen (23,115) cubic yards of concrete, or used to exceed, to-wit, One Hundred Thousand (100,000) feet of lumber, or to-wit, Forty (40) tons of iron rings and bolts, and that the fair and reasonable cost and value of said extra work done and materials furnished, including a Ten per cent. (10%) profit to said contractors, did not then and there exceed Ninety-nine Thousand Two Hundred and Ninety-two Dollars and Fifty Cents (\$99,292.50); that said moneys, and other moneys, were so obtained by said false pretenses and other false pretenses, with intent to defraud His Majesty the King in the right of the Province of Manitoba, contrary to the laws of the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty.

Fourth. That said Thomas Kelly, between the first day of May, 1913, and the first day of May, 1915, at Winnipeg aforesaid, did steal money, valuable securities or other property belonging to His Majesty the King in the right of the Province of Manitoba, and at the said place and times did also unlawfully receive money, valuable securities or other property belonging to His Majesty the King in the right of the Province of Manitoba which had theretofore been embezzled, stolen or fraudulently obtained by means of an unlawful and fraudulent conspiracy entered into between said Thomas Kelly, Sir Rodmond P. Roblin, then and there premier of the Province of Manitoba, Walter H. Montague, then and there Minister of Public Works, James H. Howden, then and there Attorney General, George R. Coldwell, then and there Acting Minister of Public Works and Minister of Education, R. M. Simpson, Victor W. Horwood, then and there Provincial Architect, and others, to defraud His Majesty the King in the right of the Province of Manitoba out of large sums of money by means of false and fraudulent contracts for extras in the construction by the firm of Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, of the new parliament buildings at Winnipeg, Manitoba, and by false and fraudulent estimates and statements of the amount and quantity of labor and materials necessary to make the changes desired, and false and fraudulent and exorbitant values for the same, and that by means of such false and fraudulent scheme, of fraud and deception, entered into, participated in and carried out by said parties, said Thomas Kelly and Sons, of which firm the said Thomas Kelly

was a member, fraudulently and feloniously obtained of the moneys of the Province of Manitoba, the sum of, to-wit, One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00) in fraud of His Majesty the King in the right of the Province of Manitoba and contrary to the Laws of the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty.

Fifth. That the information upon which this complaint is based is derived by deponent from duly authenticated copies of informations filed and warrants issued by the duly authorized officers of the Province of Manitoba in the Dominion of Canada aforesaid for the apprehension of said offenders, and of duly authenticated copies of depositions and exhibits, all of which are attached to and made part of this complaint and to which deponent refers for greater certainty as to the details constituting said crimes.

Sixth. That the aforesaid crimes, with the commission of which said Thomas Kelly is charged, are indictable offenses under the laws of the Province of Manitoba and the Dominion of Canada and are offenses within the treaties between the United States and the Kingdom of Great Britain and Ireland.

Seventh. That the said Thomas Kelly is a fugitive from justice from the Province of Manitoba and Dominion of Canada in the domain of His Britannic Majesty, and is now within the territory of the United States.

HORACE D. NUGENT.

Subscribed and sworn to before me this 15 day of October, A. D. 1915.

LEWIS F. MASON,

United States Commissioner for the Northern District of Illinois and a Commissioner Duly Authorized by the District Court of the United States for the Northern District of Illinois to Act as Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Government under a Treaty or Convention between this and any Foreign Government.

Warrant.

The President of the United States to any Marshal of the United States or to any of the deputies of any such Marshal or any or either of them:

Whereas, complaint has been made on oath under the Treaty and Supplements thereto, between the United States and the Kingdom of Great Britain and Ireland, concluded and signed at Washington, on the 9th day of August, 1842, the Supplemental Treaty concluded and signed July 12th, 1889, and the Supplemental Treaty concluded and signed December 13th, 1900, before me, one of the Commissioners appointed by the District Court of the United States for the Northern District of Illinois and also a Commissioner spe-

cially appointed to execute the Acts of Congress entitled, "An Act for giving Effect to Certain Treaty Stipulations between this and Foreign Governments for the apprehension and delivery of certain Offenders"; approved August 12th, 1848, and of the several acts amendatory thereof and supplemental thereto; that one Thomas Kelly, late of Winnipeg in the Province of Manitoba in the Dominion of Canada, on or about the 26th day of March, A. D. 1915, did unlawfully commit the crime of perjury by swearing in a judicial proceeding, to-wit, before the Public Accounts Committee of the Legislative Assembly of the Province of Manitoba, in words to the effect that the proportions in which the ingredients were in the concrete in the caissons of the new parliament buildings at Winnipeg in Manitoba, constructed by Thomas Kelly and Sons, were one, two and four, or one and six, one of cement, two of sand and four of broken stone, and that the amount of cement was a little over a barrel and one-half in each cubic yard of concrete in said caissons, such assertion being then and there known to the said Thomas Kelly to be false and being intended by him to mislead the Committee, contrary to the statute in such case provided; and

That Thomas Kelly was also there guilty of the crime of obtaining money by false pretenses; that between the 16th day of July, 1913, and the 1st day of January, A. D. 1915, at Winnipeg aforesaid, the said Thomas Kelly did unlawfully obtain for the firm of Thomas Kelly and Sons, from the provincial officers of the Province of Manitoba, having the care, custody, control and disbursing of public funds, with intent to defraud His Majesty the King in the right of the Province of Manitoba in the Dominion of Canada, the sum of, to-wit, One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00); that he obtained during the period aforesaid Seven Hundred Seventy-nine Thousand Nine Hundred and Eighty-seven Dollars (\$779,987.00) of the moneys of the Province of Manitoba on account of the pretended extra work done and materials furnished in construction of caissons for the new parliament buildings at Winnipeg, upon false and fraudulent representations and statements that Thomas Kelly and Sons had put in upwards of Thirty-five Thousand (35,000) cubic yards of reinforced concrete, used One Million Two Hundred and Thirteen Thousand (1,213,000) feet of lumber, and Seven Hundred and Ninety-seven and Five-tenths (797-5/10th-) tons of iron rings and bolts, and that the fair and reasonable value for the concrete was Twelve Dollars (\$12.00) per cubic yard and for excavating Seven Dollars (\$7.00) per cubic yard, Forty Dollars (\$40.00) per thousand feet for the lumber, and One Hundred and Forty Dollars (\$140.00) per ton for the iron rings and bolts, the said Thomas Kelly then and there well knowing the fact to be that he had not put in said caissons to exceed Twenty-three Thousand One Hundred and Fifteen (23,115) cubic yards of concrete, or used to exceed, to-wit, One Hundred Thousand (100,000) feet of lumber, or, to-wit, Forty (40) tons of iron rings and bolts, and that the fair and reasonable cost and value of said extra work done and materials furnished, including a

67 Ten per cent. (10%) profit to said contractors, did not then and there exceed Ninety-nine Thousand Two Hundred and

Ninety-two Dollars and Fifty Cents (\$99,292.50); that said moneys, and other moneys, were so obtained by said false pretenses and other false pretenses, with intent to defraud His Majesty the King in the right of the Province of Manitoba, contrary to the laws of the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty; and

That Thomas Kelly, between the first day of May, 1913, and the first day of May, 1915, at Winnipeg aforesaid, was also guilty of the crime of larceny or embezzlement and the obtaining of money, knowing the same to have been embezzled, stolen or fraudulently obtained, and that at said place and times did steal and embezzle and also unlawfully receive money, valuable securities or other property belonging to His Majesty the King in the right of the Province of Manitoba which had theretofore been embezzled, stolen or fraudulently obtained by means of a fraudulent conspiracy entered into between said Thomas Kelly, Sir Rodmond P. Roblin, then and there premier of the Province of Manitoba, Walter H. Montague, then and there Minister of Public Works, James H. Howden, then and there Attorney General, George R. Coldwell, then and there Acting Minister of Public Works and Minister of Education, R. M. Simpson, Victor W. Horwood, then and there Provincial Architect, and others, to defraud His Majesty the King in the right of the Province of Manitoba out of large sums of money by means of false and fraudulent contracts for extras in the construction by the firm of Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, of the new parliament buildings at Winnipeg, Manitoba, and by false and fraudulent estimates and statements of the amount and quantity of labor and materials necessary to make the changes desired, and false and fraudulent and exorbitant values for the same, and that by means of such false and fraudulent scheme of fraud and deception entered into, participated in and carried out by said parties, said Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, fraudulently and feloniously obtained of the moneys of the Province of Manitoba, the sum of, to wit, One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00) in fraud of His Majesty the King in the right of the Province of Manitoba and contrary to the laws of the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty; and

That the said Thomas Kelly is a fugitive from justice from the Province of Manitoba and Dominion of Canada and is now within the territory of the United States, and that the crimes of which the said Thomas Kelly has, as aforesaid, been guilty, are offenses within the treaties between the United States and the Kingdom of Great Britain and Ireland;

Now, Therefore, we command you forthwith to take the said Thomas Kelly and bring him before me, the said Commissioner, at my office, Room 807 in the Post Office Building, City of Chicago, or before the nearest Justice, Judge or Commissioner in the District in which the said Thomas Kelly is apprehended, authorized to act in proceedings for the extradition of fugitives from the justice of a foreign government, as provided in Section 5270 of the Revised

Statutes of the United States, in order that the evidence of the criminality of the said Thomas Kelly may be heard and considered, and if deemed sufficient to sustain the charge, that the same may be certified, together with a copy of all proceedings, to the Secretary of State, that a warrant may issue pursuant to said Treaties.

Witness my hand and official seal this 15th day of October, A. D. 1915.

[SEAL.]

LEWIS F. MASON,

United States Commissioner for the Northern District of Illinois and a Commissioner duly authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the laws of the United States concerning the extradition of fugitives from justice of a Foreign Government under treaty or convention between this and any Foreign Government.

And it was returned this 15th day of October, 1915, endorsed as follows:

I have executed this writ within my District in the following manner to wit: Receiving this warrant on the 15th day of October, A. D. 1915, at Chicago, Illinois, and executed the same by arresting the within named Thomas Kelly at Chicago, Illinois, the 15th day of October, A. D. 1915, and have his body now in court, as within I am commanded.

Dated at Chicago, Illinois, this 15th day of October, A. D. 1915.
Marshal's Fees \$2.00.

JOHN J. BRADLEY,

U. S. Marshal,

By **W. G. SMITH,**

Deputy Marshal.

68 *Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition.*

CONSULATE GENERAL OF THE UNITED STATES,
WINNIPEG, MANITOBA, CANADA, October 12th, 1915.

I, Frederick M. Ryder, Consul General of the United States at Winnipeg, Canada, hereby certify that the annexed papers being copy of information of Edward J. Elliott, of the City of Winnipeg, Chief of Provincial Police, copy of warrant, depositions of William Salt, Geoffrey H. Walker, John Woodman, William Killey, Nellie Robertson Ogston, Stephen Clifford Oxtan, Peter Gordon McTavish, Leopold Villeroy, J. H. G. Russell, John Allen; an Act respecting the legislature of Manitoba certified under the hand and seal of the deputy clerk of the Legislative Assembly of Manitoba, bearing the imprint of the King's Printer for Manitoba; the Votes and Proceedings of the Legislative Assembly of Manitoba of Tuesday, the 16th day of February, A. D. 1915 under the hand and seal of the deputy

clerk of the Legislative Assembly of Manitoba and bearing the imprint of the King's Printer for Manitoba; several exhibits therein referred to; the certificate of the police magistrate, Sir Hugh John MacDonald and of the Provincial Secretary and the affidavits of James Perkins and Joseph Donovan, the stenographers who took the depositions proposed to be used upon the application for the extradition from the United States of America of Thomas Kelly charged with the crime of perjury alleged to have been committed in the City of Winnipeg in the Province of Manitoba in the dominion of Canada are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of the Province of Manitoba in the Dominion of Canada as required by Act of Congress of August 3rd, 1882.

And I further certify that the signature of J. W. Armstrong on Page Number 3 of this document at the foot thereof is the proper handwriting of the Honorable James William Armstrong, Provincial Secretary for the Province of Manitoba, in the Dominion of Canada.

In Witness whereof I hereby sign my name and cause the 68½ seal of the Consulate General to be affixed this 12th day of October, A. D. 1915.

[SEAL.]

FREDERICK M. RYDER,

Consul General for the United States at Winnipeg, Canada.

(Stamp) American Consulate Service \$2 Fee Stamp 10/12/15
F. M. R.

In forwarding the annexed papers to be used in support of an application for the surrender from the United States of Thomas Kelly, charged with the crime of perjury, alleged to have been committed in the City of Winnipeg, in the Province of Manitoba, in Canada.

I hereby certify that the signature of the annexed documents certifying to the correctness of the copy of the warrant, information and depositions on which the warrant was granted, and the several Exhibits, is the signature of Sir Hugh J. Macdonald, Police Magistrate in and for the Province of Manitoba and of the City of Winnipeg, in Manitoba, having authority to issue and receive same. And I further certify that such document so signed by a Police Magistrate having jurisdiction in the place where the same were taken and authenticated by a Minister of State and sealed with his official seal would be received in evidence for similar purposes by the tribunals of the said Province of Manitoba and Dominion of Canada.

I hereby certify that the signature Marjorie Benson is the signature of the Deputy Clerk of the Legislative Assembly of Manitoba and the seal attached is the seal of the Clerk of the Legislative Assembly of Manitoba and the documents so signed and sealed would be received in evidence for similar purposes by the tribunals of the said Province of Manitoba and Dominion of Canada.

In witness whereof I have this 12th day of October 1915 set my hand and affixed my seal of office at the City of Winnipeg aforesaid.

[SEAL.]

J. W. ARMSTRONG,

Provincial Secretary.

69 CANADA,

Province of Manitoba, City of Winnipeg, To-wit:

In the Matter of the Application for the Extradition of THOMAS KELLY from the United States of America to Great Britain on the Charge of Perjury.

I, the undersigned Police Magistrate in and for the Province of Manitoba, and of the city of Winnipeg, hereby certify that the written and printed matter contained in the annexed 5 to 29 pages inclusive is a true copy of the original affidavit of James Perkins, Joseph L. Donovan, official stenographers; of the Information of Edward J. Elliott, laid and sworn before me on the 28th day of August, A. D. 1915, and the depositions of Geoffrey H. Walker, William Salt, J. Bender Priestman, Paul Schioler, Stephen Clifford Oton, Peter Gordon MacTavish, Victor William Horwood, Norman Woodruff Warren, Frederick Fearnley, William John Ptolemy, H. B. Lyall, Leopold Villeroy, J. H. G. Russell and John Allen, in support thereof, taken under oath before me on the 11th and 12th days of October, A. D. 1915, and of the exhibits therein referred to respectively; and of the warrant issued by me for the apprehension of the said Thomas Kelly.

Given under my hand and seal at my office aforesaid this 12th day of October, A. D. 1915.

HUGH J. MACDONALD,

Police Magistrate in and for the Province of Manitoba and of the City of Winnipeg, in Manitoba.

Criminal Code, Form No. 3.

Information or Complaint on Oath.

CANADA,

Province of Manitoba, Eastern Judicial District:

The Information of Edward J. Elliott, of the City of Winnipeg, Chief of Provincial Police.

In the Province of Manitoba, taken upon oath before me, the undersigned, one of His Majesty's Justices of the Peace or Police Magistrates in and for the said Province of Manitoba, at the City of Winnipeg aforesaid this 28th day of August in the year of our Lord one thousand nine hundred and fifteen Who saith that he has reason to believe and does believe that Thomas Kelly of Winnipeg aforesaid, Contractor on or about the twenty-sixth day of March one thousand nine hundred and fifteen at Winnipeg aforesaid did unlawfully commit perjury by falsely swearing in a judicial proceeding to wit before the Public Accounts Committee of the Legislative Assembly of the Province of Manitoba in words to the effect that the proportions in which the ingredients

were in the concrete in the caissons of the New Parliament Buildings at Winnipeg in Manitoba, constructed by Thomas Kelly and Sons, were one, two and four or one and six; one of cement, two of sand and four of broken stone, and that the amount of cement was a little over a barrel and one half in each cubic yard of concrete in said caissons, such assertion being then known to the said Thomas Kelly to be false and being intended by him to mislead the said committee, contrary to the form of the Statute made and provided.

E. J. ELLIOTT.

Taken and sworn before me the day and year and at the place first above mentioned.

HUGH J. MACDONALD, *J. P., P. M.*

(Criminal Code, Section- 563 and 843.)

(Coat of Arms.)

Warrant to Apprehend a Person Charged with an Offense.

CANADA,

Province of Manitoba, Eastern Judicial District:

To all or any of the Constables or other Peace Officers in the Province of Manitoba:

Whereas Thomas Kelly of the City of Winnipeg in Manitoba, Contractor hath this day been charged upon oath before the undersigned, one of His Majesty's Justices of the Peace or Police Magistrates in and for the said Province of Manitoba, for that he, on the 26th day of March A. D. 1915 at Winnipeg aforesaid did* unlawfully commit perjury

70 These are therefore to command you, in His Majesty's name, forthwith to apprehend the said Thomas Kelly and to bring him before me or some other of His Majesty's Justices of Peace, or Police Magistrates, in and for the said Province of Manitoba to answer unto the said charge and to be further dealt with according to law.

Given under my hand and seal this 28th day of August A. D. 1915, at Winnipeg in the Province of Manitoba aforesaid.

[SEAL.]

HUGH J. MACDONALD, *J. P., P. M.*

CANADA,

Province of Manitoba, City of Winnipeg:

In the matter of the application for extradition of Thomas Kelly from the United States of America to Great Britain on the charge of perjury. I, James Perkins, of the City of Winnipeg, Province of

*State shortly the offence.

Manitoba, Official Court Reporter, having been sworn to take evidence in this matter as prescribed by section 683 of the Criminal Code of Canada, make oath and say that the following is a true and correct transcript of the depositions of J. H. G. Russell and Leopold Villeroy, taken before Sir Hugh J. Macdonald, Police Magistrate in and for the Province of Manitoba, on the 11th and 12th days of October, A. D., 1915.

(S'g'd)

"JAMES PERKINS."

Sworn before me in the City of Winnipeg, in the Province of Manitoba, this 12th day of October, 1915.

(S'g'd)

"H. J. SYMINGTON,"

A Commissioner in B. R.

CANADA,

Province of Manitoba, City of Winnipeg, to wit:

In the Matter of the Application for the Extradition of THOMAS KELLY from the United States of America to Great Britain on the Charge of Perjury.

I, Joseph Lawrence Donovan, of the city of Winnipeg, in the Province of Manitoba, Court Reporter, having been sworn to take the evidence in this matter as prescribed by Section 683 of the Criminal Code of Canada, make oath and say that the following is a true and correct transcript of the depositions of,

Peter Gordon McTavish,

Stephen Clifford Oxtou,

Nellie Robertson Ogston,

William Killey,

John Woodman,

Geoffrey H. Walker,

William Salt, and

John Allen,

taken before Sir Hugh J. Macdonald, Police Magistrate in and for the Province of Manitoba, on the 11th and 12th days of October, A. D. 1915.

(S'g'd)

"J. L. DONOVAN."

Sworn before me at the city of Winnipeg, in the province of Manitoba this 12th day of October, in the year of our Lord, 1915.

(S'g'd)

"H. J. SYMINGTON,"

A Commissioner in B. R.

I, Marjorie Campbell Benson, Deputy Clerk of the Legislative Assembly and Custodian of the Statutes and Records of the Province of Manitoba, Certify the subjoined intituled The Votes and Proceedings of the Legislative Assembly of Manitoba, to be a True Copy of the Votes and Proceedings of the Legislative Assembly of Manitoba, of Tuesday the sixteenth day of February A. D. 1915, in

the Second Session of the Fourteenth Legislature held in the Fifth Year of his Majesty's reign.

Given under my hand and the Seal of the Legislative Assembly of Manitoba, this eighth day of October in the Year of Our Lord one thousand nine hundred and fifteen.

[SEAL.]

MARJORIE BENSON,
Deputy Clerk of the Legislative Assembly of Manitoba.

71 *Journals of the Legislative Assembly of Manitoba.*

Second Session, Fourteenth Legislature.

WINNIPEG, THURSDAY, 9th February, 1915—

Three o'clock p. m.

This being the First Day of the Second Session of the Fourteenth Legislature of the Province of Manitoba, for the Dispatch of Business, pursuant to a Proclamation of His Honour Sir Douglas Colin Cameron, K. C. M. G., Lieutenant-Governor, and the House having met, His Honour entered the House, and, having taken his seat on the throne, was pleased to open the Session by the following gracious speech:

Mr. Speaker and Gentlemen of the Legislative Assembly of Manitoba:

I am pleased to greet you upon the occasion of the opening of the first regular session of the fourteenth Legislature of the Province.

A few months ago you met in special session, called by reason of conditions occasioned by the outbreak of war.

At that time we were all hopeful that the hostilities might not be long continued. Contrary to our hopes, however, the struggle has continued with unabated fury until it has developed into the greatest, most expensive, and most destructive war in which the great nations of the earth have ever been engaged.

Great Britain, while intensely desirous of peace, and prompted by no selfish or interested motives, has, for the enforcement of international treaties, the protection of the world from the ruthless onward march of plutocracy and militarism, and the maintenance of those free institutions which her prowess has thus far guaranteed to civilization, been compelled to become a leading participant in the struggle, and for this high purpose her army and navy, at what must prove to be an enormous cost of treasure and blood, have been generously placed at the world's disposal.

To her aid in that great mission the overseas Dominions have without exception rallied in such a manner as to indicate in an unmistakable way the unity and solidarity of the Empire.

The Dominion of which Manitoba forms part has thus far nobly done its share, and is prepared to do its duty to the end. I am proud to know that this Province stands prominently out as a most enthusiastic centre from which have gone, and are preparing to go, many thousands of citizen-soldiers, willing to offer up their lives for

the successful prosecution of the high ideals which Great Britain has before her.

While we must all deplore the dire occasion which has thus called so many of our citizens from their peaceful pursuits into the dangers of the battle-line, we cannot but applaud the readiness and fervency with which they have responded to the Empire's call.

Relying, as we do, upon the unquestioned justice of Britain's cause, and the bravery and heroism of her defenders on land and sea, we cannot but be confident of her ultimate glorious triumph. Let us fervently pray that that triumph may not be long delayed nor, in the measure of blood, be too expensively gained, and that our Canadian soldiers shall, as we know they will, bear in the winning of the same a part which shall not only prove that they are worthy descendants of Britain's heroes in the past, but shall also contribute an honorable and noble page to the annals of our race.

The purchase of 50,000 bags of flour, to be sent as a gift to the British Government, was authorized by you at your last session. The flour was purchased from mills in Manitoba and has been forwarded to the destination named by the proper Imperial authorities.

Should it appear in the future to be the duty of Manitoba to render still further aid and assistance to the Motherland, I feel assured of the willingness of this Legislature, representing, as it does, the loyal people of the Province, to take ready and effective steps in that behalf.

The awful destruction by the German army of life and property in brave little Belgium, with all the misery and want that have followed in their train, has aroused the sympathy of the civilized world, a sympathy that has been actively and practically expressed in large contributions in money and kind. My advisers believed that it was the duty of Manitoba to join in this good work, and a contribution in cash was forwarded on behalf of the Province to the Belgian authorities. You will be asked to confirm this act on their part.

Manitoba has, in the large areas of agricultural land within her bounds still available for settlement, as well as in the other valuable

72 and varied resources of her hinterland, possessions which, in the near future, will be sources of wealth to her, and I am glad to know that not only during the past two years have a very large number of homesteads been taken up by settlers in the northern portions of the Province, but that the official records show that the number of such entries has, during the past few months, shown a very large increase over any previous corresponding period. This added settlement, and the large additional acreage being put under cultivation in the older districts, will naturally result in an ever-increasing production of cereals and other food supplies, very much to be desired, not only for our own profit but for the purposes of the Empire's needs.

A Bill to create a Bureau of Labor will be laid before you as will also Bills by which it is proposed to amend "The Liquor License Act," "The Factories Inspection Act," and "The Good Roads Act."

The Public Accounts for the past year will be submitted to you. The Estimates for the current year will also be laid before you. You will find these prepared with due regard to economy and the efficiency of the public service.

I now leave you to the discharge of your duties, with a fervent hope that your labors may, under the guidance of Providence, redound to the advantage and prosperity of the Province and Empire to which we belong.

His Honour the Lieutenant-Governor was then pleased to retire.

Ordered, That the Hon. Sir Rodmond Roblin have leave to introduce a Bill respecting the Administration of Oaths of Office.

He accordingly presented the said Bill to the House, and the same was received and read the First time.

Mr. Speaker then informed the House that, in order to prevent mistakes, he had obtained a copy of the Speech of His Honour, which was read.

On motion of the Hon. Sir Rodmond Roblin, seconded by the Hon. Mr. Howden,

Ordered, That the Speech of His Honour the Lieutenant-Governor to this House be taken into consideration at the next sitting of the House.

Ordered, That the Votes and Proceedings of this House be printed, having been first perused by Mr. Speaker, and that he do appoint the printing thereof, and that no person but such as he shall appoint do presume to print the same.

Resolved, That the Select Standing Committees of this House for the present Session be appointed for the following purposes:

- I. On Privileges and Elections.
- II. On Law Amendments.
- III. On Private Bills.
- IV. On Standing Orders.
- V. On Public Accounts.
- VI. On Printing.
- VII. On the Library.
- VIII. On Agricultural and Immigration.
- IX. On Railways, Telephones and Telegraphs.

Which said Committees shall severally be empowered to examine and enquire into all such matters and things as may be referred to them by the House, and to report from time to time their observations and opinions thereon, with power to send for persons, papers and records, and to examine witnesses under oath.

On motion of the Hon. Sir Rodmond Roblin, seconded by the Hon. Mr. Howden,

Ordered, That a Special Committee of eight Members be appointed to prepare and report, with all convenient speed, lists of Members to compose the Select Standing Committees ordered by this House, and that the said Committee be composed as follows:

Hon. Messieurs Coldwell, Armstrong, and Lawrence, Messieurs Winkler, Norris, Baird, and the Mover and Seconder.

And then the House adjourned at 3.30 p. m.

WEDNESDAY, 10th February, 1915.

The following Petitions were brought up and laid upon the Table:

By Mr. Haig: The Petitions of A. J. Bannerman, et al., praying for the passing of an Act for the formation of a new Municipality; of The National Loan and Investment Corporation, Limited, praying for the passing of an Act to amend The Real Property Act by providing for the removal of Caveat No. 11360; of J. T. Gordon, et al., praying for the passing of an Act to incorporate The Winnipeg Live Stock Exchange.

By Mr. Newton: The Petition of M. Morris, et al., praying for the passage of an Act to incorporate Brandon Golf and Country Club.

73 By Mr. McLean: The Petition of The Manitoba Association of Graduate Nurses for the passing of an Act to amend the Act of Incorporation of said Association.

By Mr. Benard: The Petitions of the Rev. Alex. Gagnieux, S. J., et al., praying for the passing of an Act to incorporate The Society of Jesus; of Cordelia Bousquet (in religion Sister Raphael de la Providence), et al., praying for the passing of an Act to incorporate Les Religieuses Carmelites.

By Mr. Foley: The Petition of The Winnipeg Electric Railway Company, praying for the passing of an Act respecting the said Company.

The Hon. Mr. Coldwell, a Member of the Executive Council, laid upon the Table, by command of His Honour the Lieutenant-Governor.

Report of the Department of Education for the year 1914.

(Sessional Papers, No. 3.)

Mr. Foley moved, seconded by Mr. Ray,

And the Question being proposed,

That an humble Address be presented to His Honour the Lieutenant-Governor, thanking His Honour for the Gracious Speech delivered by him at the opening of the present Session and for his expression of welcome at the opening of this, the first regular Session of the Fourteenth Legislature of the Province.

And a Debate arising thereupon,

On motion of Mr. Armstrong (Gladstone), seconded by Mr. Johnson (Winnipeg, Centre),

Ordered, That the Debate be adjourned.

Ordered, That the Hon. Mr. Howden have leave to introduce a Bill to amend "The Liquor License Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Thursday next.

Ordered, That the Hon. Mr. Lawrence have leave to introduce a Bill to enable Municipalities to borrow limited amounts of money for Seed Grain purposes.

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Thursday next.

And the House adjourned at 6 o'clock p. m.

THURSDAY, 11th February, 1915.

The Hon. Mr. Armstrong, a Member of the Executive Council, laid upon the Table, by command of His Honour the Lieutenant-Governor:

Statement of Special Warrants of His Honour the Lieutenant-Governor issued during the year 1914.

(Sessional Papers, No. 4.)

The Hon. Mr. Bernier, a Member of the Executive Council, laid upon the Table, by command of His Honour the Lieutenant-Governor:

Report of the Provincial Secretary's Department for the year 1914.

(Sessional Papers, No. 5.)

Statement of Bonds registered in the Provincial Secretary's Department during the year 1914.

(Sessional Papers, No. 6.)

On motion of Mr. Ross, seconded by Mr. Molloy,

Ordered, That an Order of the House do issue for a Return showing:

(1) The amount of fees paid during the years 1911, 1912, 1913 and 1914 to the various Surrogate Court Judges of the Province, with the dates and the amounts of payments in every case.

On motion of Mr. Ross, seconded by Mr. Molloy,

Ordered, That an Order of the House do issue for a Return showing:

(1) All moneys expended upon the road built in St. Clements Municipality, in, and in the neighborhood of, East Selkirk Village.

(2) The length of same during the summer of 1914.

On motion of Mr. Ross, seconded by Mr. Williams,

Ordered, That an Order of the House do issue for a Return showing:

(1) The length of highway running through St. Clements Municipality being built under "The Goods Roads Act";

(2) The estimated cost of same;

(3) The amount expended upon it to date for grading and gravelling separately;

(4) The estimated cost for finishing same;

(5) The number of culverts and bridges, giving the cost of each separately.

On motion of Mr. Ross, seconded by Mr. Williams,

Ordered, That an Order of the House do issue for a Return showing:

74 (1) All moneys expended upon roads in the Municipality of St. Clements during 1914;

(2) Where the same has been expended;

(3) The amount in each case, and to whom the said amount was paid. The amount of money still owing, if any, and to whom.

On motion of Mr. Graham, seconded by Mr. Parrish,

Ordered, That an Order of the House do issue for a Return showing:

The amount of moneys expended on the new Agricultural Buildings at St. Vital up to and including thirtieth November, 1914.

On motion of Mr. Baird, seconded by Mr. Winkler,

Ordered, That an Order of the House do issue for a Return showing:

(1) A list of all sub-contractors on the new Power House, Winnipeg, of which the Minister of Public Works has approved, or of which such Minister has had notice, showing the names of such sub-contractors, the dates of such sub-contracts, the work covered thereby, and the amount involved in such sub-contracts;

(2) Copies of all correspondence between the Minister of Public Works, or any Department of the Government, and any architects, engineers or contractors relating to the new Power House, Winnipeg, and copies of all reports of any inspectors employed by the Government in connection with inspection of the said Power House.

On motion of Mr. Baird, seconded by Mr. Winkler,

Ordered, That an Order of the House do issue for a Return showing:

(1) All plans and specifications on which the original tenders for the new Power House, Winnipeg, were submitted;

(2) All plans and specifications in accordance with which the contract for the new Power House, Winnipeg, was entered into;

(3) All subsequent plans and specifications showing any variation or departure from the original plans and specifications;

(4) Copies of all architects' and engineers' preliminary estimates as to the cost of the new Power House, Winnipeg, or any portion thereof;

(5) A statement of all deductions made from the main contract, or any contract, caused by changes in the construction or otherwise, with the dates and the amounts of such deductions, and showing the amount of the cost of performing the work substituted for the work so eliminated from such contract or contracts;

(6) Copies of all applications for payments by contractors, whether on force account or on contract account, in connection with the new Power House, Winnipeg, with copies of the statements, vouchers, pay-rolls, etc., which accompanied the same;

(7) Copies of all daily or weekly or other reports by servants or agents of the Government showing quantities of material and the amount of labor supplied from day to day in connection with force work account on the new Power House, Winnipeg.

On motion of Mr. Baird, seconded by Mr. Winkler,

Ordered, That an Order of the House do issue for a Return showing:

(1) A list of all the tenders submitted for the Power House at Winnipeg, showing the dates thereof, and the names and addresses of the tenderers and the amount of each tender;

(2) Copies of the detailed form of tender submitted by such tenderer;

(3) Copies of all contracts entered into respecting the Power House aforesaid, or any portion thereof, and copies of all orders

for work done, or to be done on force account in connection therewith;

(4) Copies of all progress certificates issued from time to time to any person or corporation in connection with the Power House aforesaid, whether on contract or force account;

(5) A statement showing all payments of five hundred dollars or over on account of the Power House at Winnipeg, the dates and amounts thereof, and the names of the parties to whom paid;

(6) Copies of all Orders-in-Council dealing with the work on the Power House at Winnipeg or any part thereof;

(7) The names of all officials of the Government charged with supervision of work done on force account in connection with the Power House aforesaid, and any correspondence or reports relating to the same, and showing also what particular duty was assigned to each official;

(8) A statement in brief summary form showing all changes in contract or in methods of construction or equipment relating to the Power House at Winnipeg, or the equipment thereof heretofore made or now under consideration;

75 (9) Estimated cost of the Power House at Winnipeg when the same is finally completed and equipped.

On motion of Mr. Baird, seconded by Mr. Winkler,

Resolved, That an humble Address be presented to His Honour the Lieutenant-Governor praying that His Honour may be pleased to cause to be laid before the House a Return showing—

(1) The names of all Justices of the Peace whose commissions were rescinded or revoked during the year 1914, and the date of such rescission or revocation, and the causes for which such commissions were rescinded or revoked;

(2) A list of all Justices of the Peace appointed during the year 1914, and the address of said appointee.

On motion of Mr. Baird, seconded by Mr. Winkler,

Ordered, That an Order of the House do issue for a Return showing—

All payments made on capital account between the first of August, 1914, and the thirtieth November, 1914, with the names of the payee in all cases and the dates of payment, the amount paid, and showing also the purposes for which the amounts were paid.

On motion of Mr. Johnson (Winnipeg Centre), seconded by Mr. Armstrong (Gladstone),

Resolved, That an humble Address be presented to His Honour the Lieutenant-Governor praying that his Honour may be pleased to cause to be laid before the House a Return showing—

Copies of all Orders-in-Council dealing with the change in the Land Titles Office fees, which became operative on or about the sixth day of February, A. D. 1915.

On motion of Mr. Johnson (Winnipeg Centre), seconded by Mr. Armstrong (Gladstone),

Ordered, That an Order of the House do issue for a Return showing—

(1) The terms and conditions on which competitive plans for the

new Parliament Buildings were submitted, and, in particular, the remuneration to the architect whose plans were finally adopted;

(2) A list of all the tenders submitted for the new Parliament Buildings, showing the dates thereof, and the names and addresses of the tenderer and the amount of each tender;

(3) Copies of the detailed form of tender submitted by each tenderer;

(4) All plans made and the data obtained dealing with the nature of the foundations and the distance from grade to bedrock, and the dates of such plans, with information showing by whom compiled and prepared;

(5) Copies of all contracts entered into respecting the new Parliament Buildings or any portions thereof and copies of all orders for work done or to be done on force account;

(6) Copies of all progress certificates issued from time to time to any persons or corporations in connection with the new Parliament Buildings, whether on contract or force account;

(7) A statement showing all payments over one thousand dollars on account of the new Parliament Buildings, the dates and the amounts thereof, and the names of the parties to whom paid;

(8) Copies of all Orders-in-Council dealing with the work on the new Parliament Buildings or any part thereof;

(9) The names of all officials of the Government charged with supervision of work done on force accounts, and any correspondence and all reports relating to the same, and showing also what particular duty was assigned to each official;

(10) A statement in brief summary form showing all changes in contract or in method of construction relating to the new Parliament Buildings heretofore made.

On motion of Mr. Johnston (Winnipeg Centre), seconded by Mr. Armstrong (Gladstone),

Ordered, That an Order of the House do issue for a Return showing—

(1) All plans and specifications on which the original tenders were submitted;

(2) All plans and specifications in accordance with which the main contract for the new Parliament Buildings were entered into;

(3) All subsequent plans or specifications showing any variation or departure from the original plans and specifications;

(4) Copies of all architects' and engineers' preliminary estimates as to the cost of the new Parliament Buildings or any portion thereof;

(5) A statement of all deductions made from the main contract or any contract caused by changes in the construction or otherwise, with the dates and amounts of such deductions, and showing the amount of the cost of performing the work substituted for the work so eliminated from such contract or contracts;

(6) Copies of all applications for payment by contractors, whether on force account or on contract account, with copies of all statements, vouchers, pay-rolls, etc., which accompanied the same;

(7) Copies of all reports on the dimensions and depth of each and every caisson in the foundations of the new Parliament Buildings,

and copies of the certificates or report of any Government official who inspected or certified as to each caisson;

(8) Copies of all daily or weekly or other reports by servants or agents of the Government showing quantities of material and amount of labor supplied from day to day in connection with force account work on the new Parliament Buildings.

On motion of Mr. Johnston (Winnipeg Centre), seconded by Mr. Armstrong (Gladstone),

Ordered, That an Order of the House do issue for a Return showing—

(1) A list of all sub-contracts on the new Parliament Buildings of which the Minister of Public Works has approved, or of which such Minister has notice, showing the names of such contractors, the dates of such sub-contracts, the work covered thereby, and the amount involved in such sub-contracts;

(2) Copies of all correspondence between the Minister of Public Works or any Department of the Government and any architects, engineers or contractors relating to the new Parliament Buildings, and copies of all such reports of any inspectors employed by the Government in connection with the inspection of the new Parliament Buildings.

On motion of Mr. Armstrong (Gladstone), seconded by Mr. Johnston (Winnipeg Centre),

Ordered, That an Order of the House do issue for a Return showing—

(1) A description of all the work done by the Public Works Department in townships twenty-one and twenty-two, ranges ten and eleven, in each of the years 1913 and 1914;

(2) The total expenditure in each year;

(3) The names of all the workmen engaged and the amount paid to each in each of the years.

On motion of Mr. Armstrong (Gladstone), seconded by Mr. Johnston (Winnipeg Centre),

Ordered, That an Order of the House do issue for a Return showing—

All expenditures of money paid or incurred in connection with the election of a member to the Legislative Assembly for the constituency of Grand Rapids in the year 1914.

On motion of Mr. Armstrong (Gladstone), seconded by Mr. Johnston (Winnipeg Centre),

Ordered, That an Order of the House do issue for a Return showing—

The original documents relating to the election of a member of the Legislative Assembly of the Province of Manitoba for the constituency of Grand Rapids held on the eleventh day of August, 1914, including the writ of election, the return by the returning officer, and the registry of such return.

On motion of Mr. Thornton, seconded by Mr. Malcolm.

Ordered, That an Order of the House do issue for a Return showing—

(1) A list of all sub-contractors on the new Agricultural College

Buildings of which the Minister of Public Works has approved, or of which such Minister has had notice, showing the names of such sub-contractors, the dates of such *sub-tractors*, the work covered thereby, and the amount involved in such sub-contracts;

(2) Copies of all correspondence between the Minister of Public Works or any Department of the Government and any architects, engineers and contractors relating to the new Agricultural College Buildings, and copies of all reports of any inspectors employed by the Government in connection with inspection of the new Agricultural College Buildings.

On motion of Mr. Thornton, seconded by Mr. Malcolm,

Ordered, That an Order of the House do issue for a Return showing—

(1) All plans and specifications on which the original tenders for the new Agricultural College were submitted;

(2) All plans and specifications in accordance with which the main contract or any or all of the buildings at the new Agricultural College were entered into;

(3) All subsequent plans and specifications showing any variation or departure from the original plans and specifications;

77 (4) Copies of all architects' and engineers' preliminary estimates as to the cost of the new Agricultural College Buildings or any portion thereof;

(5) A statement of all deductions made from the main contract or any contract caused by changes in the construction or otherwise, with the dates and the amounts of such deductions, and showing the amount of the cost of performing the work substituted for the work so eliminated from such contract or contracts;

(6) Copies of all applications for payments by contractors, whether on force account or on contract account, in connection with any of the new Agricultural College Buildings, with copies of the statements, vouchers, pay-rolls, etc., which accompanied the same;

(7) Copies of all daily or weekly or other reports by servants or agents of the Government showing quantities of material and the amount of labor supplied from day to day in connection with force account work on the new Agricultural College Buildings.

On motion of Mr. Thornton, seconded by Mr. Malcolm,

Ordered, That an Order of the House do issue for a Return showing—

(1) A list of all the tenders submitted for any or all of the buildings in connection with the new Agricultural College, showing the details thereof, the names and addresses of the tenderers, and the amount of each tender;

(2) Copies of the detailed form of tender submitted by each tenderer;

(3) Copies of the contracts entered into respecting the new Agricultural College Buildings or any one or more or portions thereof, and copies of all orders for work done or to be done on force account in connection with such buildings;

(4) Copies of all progress certificates issued from time to time to

any person or corporation in connection with the new Agricultural College Buildings whether on contract or force account;

(5) Statement showing all payments of one thousand dollars or over on account of the new Agricultural College Buildings, amounts of such payments, and the names of the parties to whom paid;

(6) Copies of all Orders-in-Council dealing with work on the new Agricultural College Buildings or any part thereof;

(7) The names of all officials of the Government charged with the supervision of work done on force account, and any correspondence and reports relating to the same, and showing also what particular duty was assigned to each official;

(8) Statement in brief summary form showing all changes in contracts or in methods of construction relating to the new Agricultural College Buildings;

(9) A statement showing the total cost of each building now completed;

(10) A statement showing the estimated cost of completing such buildings at the new Agricultural College as are not already completed.

On motion of Mr. Thornton, seconded by Mr. Malcolm,

Ordered, That an Order of the House do issue for a Return showing—

(1) All advances to the Clerk of Contingencies during the fiscal year ending thirtieth November, 1914;

(2) A statement showing how such advances were disbursed, with amounts and dates and the payee in all cases.

On motion of Mr. Hudson, seconded by Mr. McPherson,

Ordered, That an Order of the House do issue for a Return showing—

(1) A list of all tenders submitted for the new Court House, Eastern Judicial District showing the dates thereof and the names and addresses of the tenderers, and the amount of each tender, and the dates when each tender was received by the Department;

(2) Copies of the detailed form of tender submitted by each tenderer;

(3) All plans made and data obtained dealing with the nature of the foundation and the distance from grade to bed-rock, and the dates of such plans, with information showing by whom compiled or prepared;

(4) Copies of all such contracts entered into respecting the said Court House or any portions thereof, and copies of all orders for work done or to be done on force account;

(5) Copies of all progress certificates issued from time to time to any person or corporation in connection with the said Court House, whether on contract or force account;

(6) A statement showing all payments of one thousand dollars or over on account of the said Court House, and the dates and the amounts thereof, and the names of the parties to whom paid;

(7) Copies of all Orders-in-Council dealing with the work on the Court House aforesaid or any part thereof;

78 (8) The names of all officials of the Government charged with supervision of work done on force account; and any correspondence or report relating to the same, and showing also what particular duty was assigned to each official;

(9) A statement showing the names of all inspectors and supervisors employed at the present time in connection with the said Court House;

(10) A statement in brief summary form showing all changes in contract or in methods of construction relating to the Court House for the Eastern Judicial District heretofore made.

On motion of Mr. Hudson, seconded by Mr. McPherson,

Ordered, That an Order of the House do issue for a Return showing—

(1) All plans and specifications on which the original tenders for the new Court House, Eastern Judicial District, were submitted;

(2) All plans and specifications in accordance with which the contract for the new Court House, Eastern Judicial District, was entered into;

(3) All subsequent plans and specifications showing any variation or departure from the original plans and specifications;

(4) Copies of all architects' and engineers' preliminary estimates as to the cost of the New Court House, Eastern Judicial District, or any portion thereof;

(5) A statement of all deductions made from the main contract or any contract caused by changes in the construction or otherwise, with the dates and the amounts of such deductions, and showing the amount of the cost of performing the work substituted for the work so eliminated from such contract or contracts;

(6) Copies of all applications for payments by contractors, whether on force account or on contract account, in connection with the new Court House, Eastern Judicial District, with copies of the statement vouchers, pay-rolls, etc., which accompanied the same;

(7) Copies of all daily or weekly or other reports by servants or agents of the Government showing quantities of material and the amount of labor supplied from day to day in connection with force account of work on the new Court House, Eastern Judicial District.

On motion of Mr. Hudson, seconded by Mr. McPherson,

Ordered, That an Order of the House do issue for a Return showing—

(1) A list of all sub-contractors on the new Court House, Eastern Judicial District, of which the Minister of Public Works has approved, or of which such Minister has had notice, showing the names of such sub-contractors and the dates of such sub-contracts, the work covered thereby, and the amount involved in such sub-contracts;

(2) Copies of all correspondence between the Minister of Public Works or any Department of the Government and any architects, engineers or contractors relating to the new Court House, Eastern Judicial District, and copies of all reports of any inspectors employed by the Government in connection with inspection of the said Court House.

On motion of Mr. Norris, seconded by Mr. Winkler,

Ordered, That an Order of the House do issue for a Return showing—

(1) A list of all sub-contractors on the Brandon Asylum of which the Minister of Public Works has approved, or of which such Minister has had notice, showing the names of such sub-contractors, the dates of such sub-contracts, the work covered thereby, and the amount involved in such sub-contract;

(2) Copies of all correspondence between the Minister of Public Works or any Department of the Government and any architects, engineers or contractors relating to the Brandon Asylum, and copies of all reports of any inspectors employed by the Government in connection with inspection of the Brandon Asylum.

On motion of Mr. Norris, seconded by Mr. Winkler,

Ordered, That an Order of the House do issue for a Return showing—

(1) A list of all tenders submitted for buildings at the Brandon Asylum, showing the dates thereof, and the names and addresses of the tenderers and the amount of each tender;

(2) Copies of the detailed form of tender submitted by each tenderer;

(3) Copies of all contracts entered into respecting any buildings at the Brandon Asylum or any portion thereof, and copies of all orders for work done on force account in connection therewith;

(4) Copies of all progress certificates issued from time to time to any person or corporation in connection with any buildings at the Brandon Asylum, whether on contracts or force account;

79 (5) A statement showing all payments of five hundred dollars or over on account of the buildings at the Brandon Asylum, the dates and the amounts thereof, and the names of the parties to whom paid;

(6) Copies of all Orders-in-Council dealing with the work on the buildings at the Brandon Asylum or any part thereof;

(7) The names of all officials of the Government charged with supervision of work done on force account in connection with any buildings at the Brandon Asylum, and any correspondence or reports relating to the same, and showing also what particular duty was assigned to each official;

(8) A statement in brief summary form showing all changes in contracts or in methods of construction relating to any building at the Brandon Asylum heretofore made.

(9) A statement showing the total cost of each completed building in connection with the Brandon Asylum, including the main building.

On motion of Mr. Norris, seconded by Mr. McPherson,

Ordered, That an Order of the House do issue for a Return showing—

(1) All plans and specifications on which the original tenders for the Brandon Asylum or any portion thereof were submitted;

(2) All plans and specifications in accordance with which the contract for the Brandon Asylum were entered into;

(3) All subsequent plans and specifications showing any variation or departure from the original plans and specifications;

(4) Copies of all architects' and engineers' preliminary estimates as to the cost of the Brandon Asylum or any portion thereof;

(5) A statement of all deductions made from the main contract or any contract caused by changes in the construction or otherwise, with the dates and the amounts of such deductions, and showing the amount of the cost of performing the work substituted for the work so eliminated from such contract or contracts;

(6) Copies of all applications for payments by contractors, whether on force account or on contract account, in connection with the Brandon Asylum, with copies of the statements, vouchers, pay-rolls, etc., which accompanied the same;

(7) Copies of all daily or weekly or other reports by servants or agents of the Government showing quantities of material and amount of labor supplied from day to day in connection with force account work on the Brandon Asylum.

The Order of the Day being read to resume the adjourned Debate on the Question, which was on yesterday proposed—

That an humble Address be presented to His Honour the Lieutenant-Governor, thanking him for the gracious Speech delivered by him at the opening of this Session;

And the Question being again proposed, the House resumed the said adjourned Debate.

And the Debate continuing,

On motion of Mr. Williams, seconded by Mr. Breakey,

Ordered, That the Debate be adjourned.

The Order of the Day being read for the Second Reading of the Bill (No. 3) to enable Municipalities to Borrow Limited Amounts of Money for Seed Grain purposes.

The Bill was accordingly read a Second time, and

Referred to the Select Standing Committee on Law Amendments.

Ordered, That the Hon. Mr. Coldwell have leave to introduce a Bill to amend "The Motor Vehicle Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Monday next.

Ordered, That the Hon. Mr. Coldwell have leave to introduce a Bill to amend "The Municipal Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Monday next.

Ordered, That the Hon. Mr. Coldwell have leave to introduce a Bill to amend "The Towns and Villages Business Tax Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Monday next.

Ordered, That the Hon. Mr. Coldwell have leave to introduce a Bill to amend "The Municipal Boundaries Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Monday next.

Ordered, That the Hon. Mr. Coldwell have leave to introduce a Bill to amend "The Public Schools Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Monday next.

80 Ordered, That Mr. Johnson (Winnipeg Centre) have leave to introduce a Bill to amend "The Public Schools Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Monday next.

And then the House adjourned at 5.40 o'clock p. m.

FRIDAY, 12th February, 1915.

The following Petitions were brought up and laid upon the Table:

By Mr. Steel: The Petition of Canadian Guaranty Trust Company, praying for the passing of an Act to amend the Act of Incorporation of the Petitioners.

By Mr. Riley: The Petition of the Winnipeg River Railway Company praying for the passing of an Act to amend the Act of Incorporation of the said Company.

By Mr. Foley: The Petition of The Congregation Shaarey Zedek of Winnipeg, praying for the passing of an Act to amend the Act of Incorporation of the said Congregation.

Pursuant to the Orders of the Day the following Petitions were read and received:

Of A. J. Bannerman, et al., praying for the passing of an Act for the formation of a new Municipality;

Of The National Loan and Investment Corporation, Limited, praying for the passing of an Act to amend "The Real Property Act" by providing for the removal of Caveat No. 11360;

Of J. T. Gordon, et al., praying for the passing of an Act to incorporate The Winnipeg Live Stock Exchange;

Of M. Morris, et al., praying for the passing of an Act to incorporate Brandon Golf and Country Club;

Of the Manitoba Association of Graduate Nurses for the passing of an Act to amend the Act of Incorporation of said Association;

Of the Rev. Alex. Gagnieux, S. J., et al., praying for the passing of an Act to incorporate The Society of Jesus;

Of Cordelia Bousquet (in religion Sister Raphael de la Providence), et al., praying for the passing of an Act to incorporate Les Religieuses Carmelites;

Of The Winnipeg Electric Railway Company praying for the passing of an Act respecting the said Company.

The Hon. Mr. Howden, a Member of the Executive Council, laid upon the Table: ☉

Return to an Address to His Honour the Lieutenant-Governor, dated 11th February instant, praying that His Honour would cause to be laid before this House a Return showing:

Copies of all Orders-in-Council dealing with the change in the Land Titles Office fees, which became operative on or about the sixth day of February, A. D. 1915.

(Sessional Papers, No. 7.)

The Order of the Day being read to resume the adjourned Debate on the question, which was on Wednesday last proposed,

That an humble Address be presented to His Honour the Lieutenant-Governor, thanking him for the gracious Speech delivered by him at the opening of this Session;

And the Question being again proposed, the House resumed the said adjourned Debate.

And the Debate continuing,

On motion of Mr. Malcolm, seconded by Mr. Molloy,

Ordered, That the Debate be adjourned.

Ordered, That Mr. Clingan have leave to introduce a Bill to amend "The Liquor License Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Tuesday next.

Ordered, That Mr. Foley have leave to introduce a Bill respecting Locomotive Engineers.

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Tuesday next.

Ordered, That Mr. Haig have leave to introduce a Bill respecting the Town of Tuxedo.

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Tuesday next.

And then the House adjourned at 5.45 o'clock p. m. until Monday next at 8 o'clock p. m.

MONDAY, 15th February, 1915—

Sitting at eight o'clock p. m.

The following Petition was brought up and laid upon the Table:
By Mr. Haig: The Petition of the Brandon College and The Baptist Union of Western Canada praying for the passing of an Act to amend chapter 64 of 63 and 64 Victoria, intituled "An Act to incorporate Brandon College."

81 Pursuant to the Orders of the Day the following Petitions were read and received:

Of The Canadian Guaranty Trust Company, praying for the passing of an Act to amend the Act of Incorporation of the Petitioners.

Of The Winnipeg River Railway Company, praying for the passing of an Act to amend the Act of Incorporation of the said Company.

Of the Congregation Shaarey Zedek of Winnipeg, praying for the passing of an Act to amend the Act of Incorporation of the said Congregation.

The Hon. Mr. Howden, a Member of the Executive Council, laid upon the Table:

Return to an Address to His Honour the Lieutenant-Governor, dated 11th February instant, praying that His Honour would be pleased to cause to be laid before this House a Return showing:

(1) The names of all Justices of the Peace whose commissions

were rescinded or revoked during the year 1914, and the date of such rescission or revocation, and the causes for which such commissions were rescinded or revoked;

(2) A list of all Justices of the Peace appointed during the year 1914, and the address of such appointee.

(Sessional Papers, No. 8.)

The Order of the Day being read to resume the adjourned Debate on the Question, which was on Wednesday last proposed.

That an humble Address be presented to His Honour the Lieutenant-Governor, thanking him for the gracious Speech delivered by him at the opening of this Session;

And the Question being again proposed, the House resumed the said adjourned Debate.

And the Debate continuing,

On motion of Mr. Thorvaldson, seconded by Mr. Orok,
Ordered, That the Debate be adjourned.

The Order of the Day being read for the Second reading of the Bill (No. 4) to amend chapter 67 of 4 George V,

The Bill was accordingly read a Second time, and

Referred to the Select Standing Committee on Law Amendments.

The Order of the Day being read for the Second reading of the Bill (No. 5) to amend "The Towns and Villages Business Tax."

The Bill was accordingly read a Second time, and

Referred to the Select Standing Committee on Law Amendments.

The Order of the Day being read for the Second reading of the Bill (No. 6) to amend "The Municipal Act,"

The Bill was accordingly read a Second time, and

Referred to the Select Standing Committee on Law Amendments.

Ordered, That the Hon. Mr. Bernier have leave to introduce a Bill further to amend "The Municipal Boundaries Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Wednesday next.

Ordered, That the Hon. Mr. Bernier have leave to introduce a Bill to amend "The St. Boniface Charter."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Wednesday next.

Ordered, That the Hon. Mr. Bernier have leave to introduce a Bill to amend "The Railway Taxation Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Wednesday next.

Ordered, That the Hon. Mr. Bernier have leave to introduce a Bill to amend "The Good Roads Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Wednesday next.

Ordered, That Hon. Mr. Howden have leave to introduce a Bill further to amend "The Assignments Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Wednesday next.

Ordered, That the Hon. Mr. Howden have leave to introduce a Bill to amend "The Prosecution Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Wednesday next.

Ordered, That the Hon. Mr. Armstrong have leave to introduce a Bill to amend "The Fire Insurance Policy Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Wednesday next.

Ordered, That the Hon. Mr. Armstrong have leave to introduce a Bill to amend "The Manitoba Insurance Act."

82 He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Wednesday next.

And then the House adjourned at 10:55 p. m.

TUESDAY, 16th February, 1915.

The following petitions were brought up and laid upon the Table:

By Mr. Foley: The Petitions of John Sinclair Menzies praying for the passing of an Act for the relief of Petitioner by the withdrawal of certain caveats in the Land Titles Office; and of Ernest W. Andrews, praying for the passing of an Act to vary certain building restrictions referred to in Caveat No. 18411.

The Hon. Sir Rodmond Roblin, from the Select Committee appointed to prepare and report lists of Members to compose the Select Standing Committees ordered by the House, presented their Report, which was read as follows:

Your Committee have prepared the following lists of Members:

Privileges and Elections:

Hon. Messieurs Coldwell and Bernier, Messieurs Newton, Riley, McFadden, Morrow, Lauzon, Parent, Benard, Baird, Williams, Breakey, Johnson (Winnipeg Centre) and Thornton.

Law Amendments:

Hon. Messieurs Howden and Bernier, Messieurs Mewhirter, Thorvaldson, Lauzon, Garland, McFadden, Taylor, McLean, Haig, Riley, Johnson (Winnipeg Centre), Hudson, Dixon, Winkler, Clingan, Ross, and Armstrong (Gladstone.)

Private Bills:

Messieurs Foley, Steel, Haig, Morrow, Hughes, Hamelin, McLean, Buchannon, Breakey, Parrish, McPherson, Malcolm and Williams.

Standing Orders:

Messieurs Steel, Benard, Riley, Orok, Parent, Clingan, Grierson and Williams.

Public Accounts:

Hon. Messieurs Armstrong and Coldwell, Messieurs Taylor, Benard, Foley, Orok, McFadden, Ray, Thorvaldson, Newton, McLean, Johnson (Winnipeg Centre), Hudson, Thornton, Dixon, McConnell and Breakey.

Printing:

Hon. Messieurs Bernier and Howden, Messieurs Lauzon, Orok, Thorvaldson, Riley, Benard, Molloy, Breakey, Sims and Malcolm.

Library:

Hon. Messieurs Johnson, Howden and Armstrong, Messieurs Buchannon, Morrow, Foley, Haig, Clingan, Thornton, Dixon and Grierson.

Agriculture and Immigration:

Hon. Mr. Lawrence, Messieurs Hughes, Buchannon, Steel, Hamelin, Garland, Riley, Mewhirter, Lauzon, Parent, Baird, Graham, Williams, McConnell, Malcolm and Winkler.

Railways, Telephones and Telegraphs:

Hon. Messieurs Howden, Lawrence, Messieurs Newton, Mewhirter, Hughes, Ray, Thorvaldson, Parent, Norris, McDonald, Graham, Grierson and McConnell.

Your Committee would recommend that during the Session, the quorum of all Committees shall consist of five Members.

The Hon. Sir Rodman Roblin moved, seconded by the Hon. Mr. Montague,

And the question being proposed,

That this House doth concur in the said Report.

Mr. Norris moved, in amendment, seconded by Mr. Johnson (Winnipeg Centre),

That all the words after the word "that," in the first line of the Resolution be struck out and the following insertion in lieu thereof: "the Report be not concurred in, but that it be referred back to the Committee with instructions to equalize the representation of Members on the several Committees in proportion to their representation in the House."

And the Question being put on the amendment, the House divided; and the names being called for, they were taken down as follows:

Yeas: Messieurs Armstrong (Gladstone), Baird, Breakley, Clingan, Dixon, Graham, Grierson, Hudson, Johnson (Winnipeg

Centre), McConnell, McPherson, Malcolm, Molloy, Norris, Parrish, Ross, Sims, Thornton, Williams, Winkler. (20.)

Nays: Messieurs Benard, Bernier, Buchannon, Coldwell, Foley, Garland, Hamelin, Howden, Hughes, Lauzon, Lawrence, McFadden, McLean, Mewhirter, Montague, Morrow, Newton, Orok, Parent, Ray, Riley, Roblin, Steel, Taylor, Thorvaldson. (25.)

So it passed in the negative.

Then the main Question being put, the House divided; and the names being called for, they were taken down as follows:

Yeas: Messieurs Armstrong (Grand Rapids), Benard, Bernier, Buchannon, Coldwell, Foley, Garland, Hamelin, Howden, Hughes, Lauzon, Lawrence, McFadden, McLean, Mewhirter, Montague, Morrow, Newton, Orok, Parent, Ray, Riley, Roblin, Steel, Taylor, Thorvaldson. (26.)

Nays: Messieurs Armstrong (Gladstone), Baird, Breakey, Clingan, Johnson (Winnipeg Centre), Dixon, Graham, Grierson, Hudson, Malcolm, McPherson, McConnell, Molloy, Norris, Parrish, Ross, Sims, Thornton, Williams, Winkler. (20.)

So it was resolved in the affirmative.

Resolved, That this House doth concur in the said Report.

The Hon. Mr. Montague, a Member of the Executive Council, laid upon the Table, by command of His Honour the Lieutenant-Governor:

Financial Statement of the Manitoba Government Elevators for the year ending November 30th, 1914.

(Sessional Papers, No. 9.)

Report of the Department of Public Works for the year 1914.

(Sessional Papers, No. 10.)

The Hon. Mr. McFadden, on behalf of Mr. Speaker, laid upon the Table—

Report of the Library and Museum of the Legislature for the year 1914.

(Sessional Papers, No. 11.)

On motion of Mr. Dixon, seconded by Mr. McConnell,

Ordered, That an Order of the House do issue for a Return showing—

Copies of all statements filed in the office of the Minister of Public Works in support of contractors' claims for payment re wages on the new Parliament Buildings, showing the name, rate of wages, the amounts paid and the amounts (if any) due and unpaid for wages for work and labor done by any foreman, workman, laborer or team employed upon the said work, together with copies of all statutory declarations of the contractor in respect of the new Parliament Buildings verifying the statements of wages aforesaid.

On motion of Mr. McPherson, seconded by Mr. Clingan,

Resolved, That an Humble Address be presented to His Honour the Lieutenant-Governor, praying that His Honour may be pleased to cause to be laid before this House a Return showing—

Copies of the original documents relating to the election of a Member of the Legislative Assembly of the Province of Manitoba for the constituency of The Pas, held on the twenty-third and

thirtieth days of July, 1914, including the writ of election, the return by the returning officer, the registry of such return, the registration or withdrawal of any candidate thereat, and the affidavit certifying the execution of same.

On motion of Mr. McConnell, seconded by Mr. Dixon,

Ordered, That an Order of the House do issue for a Return showing—

(1) All employees of the Province who were in the Constituency of The Pas during the month of July, 1914.

(2) What position they held under the Provincial Government.

(3) The salary of each and all sums paid to them during the year 1914.

On motion of Mr. Winkler, seconded by Mr. Baird,

Ordered, That an Order of the House do issue for a Return showing—

(1) How many demonstration farms are there in Manitoba and administered by the Government of Manitoba?

(2) Where are they located?

(3) Was land for same purchased or rented?

(4) If purchased, what was the price paid per acre in each case, and from whom purchased?

(5) If rented, what is the annual rental of each.

On motion of Mr. Grierson, seconded by Mr. Clingan,

Ordered, That an Order of the House do issue for a Return showing—

(1) The amount spent for road improvements in the year 1914 in each constituency of the Province of Manitoba;

(2) The places where such expenditures were made; and the nature of the work in each case;

(3) The amount of expenditure incurred but not paid for till after November 30th, 1914, in each case;

(4) The amount unpaid for road work in the various constituencies in the Province, with the names of the parties by whom such amounts are claimed, and which amounts (if any) are disputed by the Government.

(5) The payees in all cases.

On motion of Mr. Thornton, seconded by Mr. Malcolm,

Ordered, That an Order of the House do issue for a Return showing—

(1) The number of acres of Manitoba and North Western Railway Land Grant remaining still unsold on November 30th, 1914;

84 (2) The total amount of (a) Principal, (b) Interest still owing to the Province on November 30th, 1914, on account of lands sold.

On motion of Mr. Johnson (Winnipeg Centre), seconded by Mr. Armstrong (Gladstone),

Ordered, That an Order of the House do issue for a Return showing—

(1) Copies of all contracts for the supply of coal to the Agricultural College entered into during the year 1913;

(2) Copies of all vouchers, orders or invoices for coal delivered at the Agricultural College pursuant to the above mentioned contract.

On motion of Mr. Molloy, seconded by Mr. Malcolm,

Ordered, That an Order of the House do issue for a Return showing—

(1) The amount of money expended during the year 1914 in the Electoral Division of La Verandrye under the head of "Aid to Municipalities," or under "The Good Roads Act";

(2) A statement showing the amounts spent in the organized and unorganized parts of the Division;

(3) The name of the engineer under whose recommendation the money was spent.

On motion of Mr. Molloy, seconded by Mr. Malcolm,

Ordered, That an Order of the House do issue for a Return showing—

(1) The amount of money expended during the months of May, June and July, 1914, in Township 4, Ranges 10 and 11 East, under "The Good Roads Act," or "Aid to Municipalities";

(2) The total number of yards excavated;

(3) By whom the measurement was made;

(4) The cost per cubic yard;

(5) The total expenditure;

(6) When the work was recommended, and by whom;

(7) The names of the foremen in charge;

(8) Their salaries per day;

(9) The mode of payment to each employee—cash or cheque.

On motion of Mr. Breakey, seconded by Mr. Williams,

Ordered, That an Order of the House do issue for a Return showing—

Any correspondence between any Minister of the Government or any Department thereof, and any official authorizing payments to be made in cash for wages or contracts on road works instead of by cheque.

On motion of Mr. Norris, seconded by Mr. Johnson (Winnipeg Centre),

Ordered, That an Order of the House do issue for a Return showing—

Copies of all correspondence between any Member of the Government of Manitoba or Department thereof, and any Member or Department of the Government at Ottawa between the 1st January, 1912, and the date hereof, respecting the transfer to the Province of Manitoba of the natural resources of the said Province.

On motion of Mr. Sims, seconded by Mr. McPherson,

Ordered, That an Order of the House do issue for a Return showing—

(1) The number of miles or fraction thereof of roads built in the Municipality of Minitonas in 1914;

(2) The location of each particular piece of work and the cost of same;

(3) The names of each individual employed on the work and the amounts paid each;

(4) Under whose supervision was the work carried on and how much was each supervisor paid;

(5) Whether payment was made by cash or cheque to each employee.

On motion of Mr. Sims, seconded by Mr. McPherson.

Ordered, That an Order of the House do issue for a Return showing—

(1) The number of miles of road or fraction thereof built in the unorganized portion of the Constituency of Swan River, in the year 1914;

(2) The exact location of each particular piece of work and the cost of each;

(3) Under whose supervision was the work carried on, and how much was each paid;

(4) All payments made in all cases, and how made.

On motion of Mr. Sims, seconded by Mr. McPherson.

Ordered, That an Order of the House do issue for a Return showing—

(1) The number of miles or fraction thereof of roads built in the Municipality of Swan River in 1914;

(2) The exact location of each particular piece of work, and the cost of the same;

85 (3) The names of each individual employed and the amounts paid to each;

(4) Under whose supervision was the work carried on, and how much was the Supervisor paid;

(5) Whether payments were made in all cases by cheque;

(6) The amount paid in connection with the making of the surveys and other expenses of the roads proposed to be brought under "The Good Roads Act" in Swan River Municipality.

Mr. Grierson moved, seconded by Mr. Thornton, and the Question being proposed.

That an Order of the House do issue for a Return showing—

(1) All moneys expended upon roads in the Electoral Division of St. George during the year 1914;

(2) All moneys promised any of the Municipalities or the individuals of any locality in the same Electoral Division, but not yet paid.

The said Motion was, with leave of the House, withdrawn.

On motion of Mr. Grierson, seconded by Mr. Thornton,

That an Order of the House do issue for a Return showing—

The names of any Police Magistrates whose Commissions were in force at the time of the last election.

On motion of Mr. Grierson, seconded by Mr. Thornton.

Ordered, That an Order of the House do issue for a Return showing—

All moneys expended on roads in the Municipalities of Strathclair and Harrison during the year 1914 other than by grants to the said Municipalities

On motion of Mr. Malcolm, seconded by Mr. Thornton,
Ordered, That an Order of the House do issue for a Return showing—

(1) How many well drills are there in the Province owned by the Government;

(2) How many of these are in a good state of repair;

(3) How many of these were in use in the year 1914. Where are these now working?

(4) How many drillings were made by these machines during 1914? In how many of these was a good supply of water obtained and at what average depth?

On motion of Mr. Grierson, seconded by Mr. Thornton,

Resolved, That an humble Address be presented to His Honour the Lieutenant-Governor praying that His Honour may be pleased to cause to be laid before this House a Return showing—

The names of all Commissioners in B. R. whose commissions have been rescinded or revoked during the year 1914, and the date of such rescission or revocation and the causes for which such commissions were rescinded or revoked.

The Hon. Sir Rodmond Roblin, a Member of the Executive Council, laid upon the Table—

Return that an Order of the House, dated this day, for a Return showing—

(1) The number of acres of Manitoba and North Western Railway Land Grant remaining still unsold on November 30th, 1914;

(2) The total amount of (a) Principal, (b) Interest still owing to the Province on November 30th, 1914, on account of lands sold;

(3) The number of acres of arable land now owned by the Province of Manitoba, and the portion of said land situated within the boundaries of the Province of Manitoba.

(Sessional Papers, No. 12.)

The Order of the Day being read to resume the adjourned Debate on the question, which was on Wednesday last proposed,

That an humble Address be presented to His Honour the Lieutenant-Governor, thanking him for the gracious Speech delivered by him at the opening of this Session;

And the Question being again proposed, the House resumed the said adjourned Debate.

And the Debate continuing,

On motion of Mr. Sims, seconded by Mr. McPherson,

Ordered, That the Debate be adjourned.

The Hon. Mr. Howden moved, seconded by the Hon. Mr. Armstrong,

And the Question being proposed,

That the Bill (No. 2) to amend "The Liquor License Act" be now read a Second time,

And a Debate arising thereupon,

On motion of Mr. Hudson, seconded by Mr. Parrish,

Ordered, That the Debate be adjourned.

The Order of the Day being read for the Second Reading of the Bill (No. 11) respecting Locomotive Engineers,
The Bill was accordingly read a Second time, and

86 Referred to the Select Standing Committee on Law Amend-
ments.

Ordered, That Mr. Benard have leave to introduce a Bill to amend "The Greater Winnipeg Water District Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Thursday next.

Ordered, That Mr. Foley have leave to introduce a Bill further to extend the Territorial Limits of the City of St. Boniface.

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Thursday next.

Ordered, That Mr. Hughes have leave to introduce a Bill to incorporate the Village of Winnipegosis.

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Thursday next.

Ordered, That Mr. McPherson have leave to introduce a Bill to legalize By-law No. A91 of the Rural Municipality of North Norfolk.

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Thursday next.

Ordered, That Mr. Parent have leave to introduce a Bill respecting the Town of Morris.

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Thursday next.

Ordered, That Mr. Riley have leave to introduce a Bill to legalize By-law 334 of the Rural Municipality of St. Paul.

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Thursday next.

Ordered, That Mr. Hughes have leave to introduce a Bill to amend "The Municipal Boundaries Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Thursday next.

Ordered, That Mr. Thorvaldson have leave to introduce a Bill further to amend an Act to amend "The Municipal Boundaries Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Thursday next.

Ordered, That Mr. Garland have leave to introduce a Bill to amend "The Game Protection Act."

He accordingly presented the said Bill to the House, and the same was received and read the First time, and

Ordered, To be read a Second time on Thursday next.

And then the House adjourned at 5.35 o'clock p.m.

WEDNESDAY, 17th February, 1915.

Pursuant to the Orders of the Day, the following Petition was read and received—

Of the Brandon College and The Baptist Union of Western Canada praying for the passing of an Act to amend chapter 64 of 63 and 64 Victoria, entitled "An Act to incorporate Brandon College."

The Hon. Mr. Lawrence, a Member of the Executive Council, laid upon the Table, by command of His Honour the Lieutenant-Governor—

Report of the Department of Agriculture and Immigration for the year 1914.

(Sessional Papers, No. 13.)

Report of the Provincial Board of Health for the year ending 31st December, 1914.

(Sessional Papers, No. 14.)

The Order of the Day being read to resume the adjourned Debate on the Question, which was on Wednesday, the tenth day of February instant proposed.

That an Humble Address be presented to His Honour the Lieutenant-Governor, thanking him for the gracious Speech delivered by him at the opening of this Session;

And the Question being again proposed, the House resumed the said adjourned Debate.

And the Debate continuing,

And it being 6 o'clock p. m., Mr. Speaker left the Chair, to resume the same at half-past seven o'clock p. m.

Seven-Thirty o'clock p. m.

And the Debate continuing,

On motion of Mr. Winkler, seconded by Mr. Baird,

Ordered, That the Debate be adjourned.

The Order of the Day being read for the House to resume the adjourned Debate on the Question which was on yesterday proposed,

That the Bill (No. 2) to amend "The Liquor License Act,"

Act,"

87 And the Question being again proposed, the House resumed the said adjourned Debate,

And the Question being put,

Ordered, That the Bill be now read a Second time, and

Referred to the Select Standing Committee on Law Amendments.

The Order of the Day being read for the Second reading of the Bill (No. 10) to amend "The Liquor License Act,"

Mr. Clingan moved, seconded by Mr. Grierson, and the Question being proposed,

That the Bill (No. 10) to amend "The Liquor License Act" be now read a Second time;

And a Debate arising thereupon,

On motion of the Hon. Sir Rodmond Roblin, seconded by the Hon. Mr. Montague,

Ordered, That the Debate be adjourned.

And then the House adjourned at 10.50 o'clock p. m.

THURSDAY, 18th February, 1915.

Pursuant to the Orders of the Day, the following Petitions were read and received—

Of John Sinclair Menzies, praying for the passing of an Act for the relief of Petitioner by the withdrawal of certain caveats in the Land Titles Office;

Of Ernest W. Andrews, praying for the passing of an Act to vary certain building restrictions referred to in Caveat No. 18411.

The Hon. Sir Rodmond Roblin, a Member of the Executive Council, laid upon the Table—

Return to an Order of the House for a Return showing—

All expenditures of money paid or incurred in connection with the election of a member to the Legislative Assembly for the constituency of Grand Rapids in the year 1914.

(Sessional Papers, No. 15.)

The Hon. Mr. Armstrong, a Member of the Executive Council, laid upon the Table—

Return to an Order of the House for a Return showing—

(1) All advances to the Clerk of Contingencies during the fiscal year ending thirtieth November, 1914;

(2) A statement showing how such advances were disbursed with amounts and dates and the payee in all cases.

(Sessional Papers, No. 16.)

Report of the Superintendent of Insurance for the year 1914.

(Sessional Papers, No. 2.)

On motion of Mr. Hudson, seconded by Mr. Parrish,

Ordered, That an Order of the House do issue for a Return showing—

(1) The original estimate of cost of the New Law Court Buildings at Winnipeg;

(2) The amounts expended to date on such Buildings;

(3) When Mr. Simon or the firm of Simon & Boddington completed his or their duties in connection with the New Parliament Buildings;

(4) The amount paid to date for his or their services;

(5) The loss, if any, sustained by reason of any mistakes made by the architects and the amounts deducted, if any, from the compensation to be paid them.

On motion of Mr. Williams, seconded by Mr. Thornton,

Ordered, That an Order of the House do issue for a Return showing—

(1) The number of Municipalities in Manitoba under Local Option, including those which passed local option by-laws on the date of the last Municipal Elections, giving the names and population of each respectively;

(2) The number of Municipalities in Manitoba not under Local Option, giving the names and population of each respectively.

On motion of Mr. McLean, seconded by Mr. Buchannon,

Ordered, That an Order of the House do issue for a Return showing—

- (1) What was the total bonded debt of the Province on December 31st, 1899?
- (2) What proportion of the debt has since been paid?
- (3) What was the total bonded debt of the Province on November 30th, 1914?
- (4) How much of the total debt of the Province is represented—
 - (a) By moneys borrowed for telephone purposes?
 - (b) By moneys borrowed on account of elevators?

I, Marjorie Campbell Benson, Deputy Clerk of the Legislative Assembly and Custodian of the Statutes of the Province of Manitoba, Certify the subjoined, intituled "An Act respecting the Legislature of Manitoba" to be a True Copy of the Original Enactment, passed by the Legislative Assembly of Manitoba and confirmed by Chapter I of Four George V. (1913-14) in the Fourth Session of the Thirteenth Legislature held in the Fourth Year of His Majesty's Reign, and assented to in the King's Name by His Honour the Lieutenant-Governor on Monday the Second day of February A. D. 1914.

Given under my Hand and the Seal of the Legislative Assembly of Manitoba, at Winnipeg, this twelfth day of October in the Year of Our Lord One thousand nine hundred and fifteen.

[SEAL.]

MARJORIE BENSON,

Deputy Clerk of the Legislative Assembly of Manitoba.

Chapter 112.

An Act Respecting the Legislature of Manitoba.

His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Short Title.

1. This Act may be cited as "The Legislative Assembly Act." R. S. M. c. 96, s. 1.

Legislature.

Notwithstanding 33 Vic. c. 3, Statutes of Canada, the Legislature to consist of House of Assembly and Lieutenant-Governor. Amended Geo. V. c. 57, s. 1, 1913-14:

2. For and notwithstanding anything to the contrary contained and enacted in the Act of the Parliament of Canada passed in the thirty-third year of the reign of Her late Majesty Queen Victoria, chaptered three, intituled "An Act to amend and continue the Act 32 and 33 Victoria, chapter 3, and to establish and provide for the Government of the Province of Manitoba," the Legislature of the Province of Manitoba shall consist of the Lieutenant-Governor and the Legislative Assembly of Manitoba, composed of forty-nine members elected to represent the several electoral divisions into which

the Province is or from time to time may be divided. R. S. M. c. 96, s. 2; 2 Geo. 5, c. 33, s. 1.

Legislative Council done away with:

3. The Legislative Council of Manitoba has ceased to exist and hereafter shall have no existence, and the members of the Legislative Council of Manitoba, and the officers thereof and every — of them, have absolutely ceased and determined and shall continue so absolutely ceased and determined. R. S. M. c. 96, s. 3.

Duration of Legislative Assembly:

4. Every Legislative Assembly shall continue for five years from the day of the return of the writs for the general election of members, but the Lieutenant-Governor has always the right of dissolving any Legislative Assembly sooner if he deems it advisable. 7-8 Ed. 7, c. 25, s. 1.

Legislature not dissolved by demise of the Crown:

5. No Legislative Assembly for the Province of Manitoba shall be dissolved by the demise of the Crown, but such Assembly shall continue, and may meet, convene and sit, proceed and act, notwithstanding such demise of the Crown, in the same manner as if such demise had not happened. R. S. M. c. 96, s. 4.

Power to prorogue or dissolve not affected:

6. Nothing in the last preceding section shall alter or abridge the power of the Crown to prorogue or dissolve the Legislative Assembly. R. S. M. c. 96, s. 5.

Quorum.

Quorum in Legislative Assembly:

7. Notwithstanding any statute or law to the contrary, the quorum required for the transaction of business in the Legislative Assembly shall be ten, of whom the Speaker may be one. R. S. M. c. 96, s. 6.

Speaker.

Temporary Speaker may be named by Speaker:

8. Whenever the Speaker of the Legislative Assembly from illness or other cause, finds it necessary to leave the chair during any part of the sitting of the said Assembly on any day, he may call upon any member thereof to take the chair and act as Speaker during the remainder of such day, unless the Speaker himself resumes the chair before the close of the sitting of that day; and the member so called upon shall take the chair and act as Speaker accordingly; and any Act passed, and every order made and thing done, by the said Assembly, while such member is acting as Speaker as aforesaid, shall be as valid and effectual to all intents and purposes as if done while the Speaker himself was presiding in the chair. R. S. M. c. 96, s. 7.

In absence of Speaker:

9. Whenever the Speaker, from illness or other unavoidable cause, is not, or cannot be, present at the meeting of the Assembly on any day, it shall be lawful for the said Assembly to elect a member to take the chair and preside as Speaker for that day. R. S. M. c. 96, s. 8.

Legality of acts done in his absence:

10. Every Act passed and every order made and thing done by the said Assembly, while such member is acting or presiding as Speaker as aforesaid, shall be as valid and effectual to all intents and purposes as if done while the Speaker himself was presiding in the chair. R. S. M. c. 96, s. 9.

Disqualification of Members.

Office holders ineligible to sit in Legislative Assembly:

11. No person holding any office, commission or employment to which an annual salary from the Crown is attached shall be eligible as a member of the Legislative Assembly, or sit or vote therein, during the time he holds such office, commission or employment; but nothing herein contained

Exceptions:

shall render ineligible any person being a member of the Executive Council, and holding one of the following offices:—

President of the Council,
Attorney-General,
Minister of Public Works,
Provincial Treasurer,
Minister of Agriculture and Immigration,
Provincial Secretary,
Provincial Lands Commissioner,
Railway Commissioner of Manitoba,
Municipal Commissioner,
Minister of Education,

or any other of the Executive Council holding an office under such designation as the Lieutenant-Governor shall think fit to assign to such member on his acceptance of office, or disqualify him to sit or vote in the Assembly:

Provided he be elected whilst holding such office, and be not otherwise disqualified. R. S. M. c. 96, s. 10.

Power to transfer duty of one officer of Executive Council to another:

12. Any of the powers and duties which have been heretofore or shall be hereafter assigned by law to any of the officers now constituting, or who may hereafter constitute, the Executive Council, or which by the operation of any statute or by law devolve upon any

such officer, and that whether such office be then filled or not, may from time to time, by order-in-council, be assigned and transferred, either for a limited period or otherwise, to any other of the said officers by name or otherwise, and the officer to whom such powers and duties may be assigned shall, for the execution of such powers and duties, have the right to use the name and exercise the functions of such office, the duties of which are so assigned to him. R. S. M. c. 96, s. 11.

Any person in any way receiving any emolument from the Crown cannot sit, etc.:

13. No person accepting or holding any office, commission or employment, or performing any duty in respect of which any fee, payment, allowance or emolument is payable from the Crown through the Government of the Province of Manitoba, except coroners and justices of the peace, shall be eligible to be elected a member of the Legislative Assembly, nor shall he sit or vote in the same during the time he holds or occupies such position, or any such fee, payment, allowance or emolument is payable to him from the Crown through the Government of the Province of Manitoba:

Provided, always, that nothing in this section or in this Act contained shall affect section 11 of this Act. R. S. M. c. 96, s. 12.

No party interested in any contract with the Crown to sit or vote:

14. No person being or becoming a party to any contract or agreement by which he is to receive any payment of money, advantage or profit from the Crown through the Government of the Province of Manitoba shall be eligible to be elected a member of the said Legislative Assembly, nor shall he sit or vote in the same during the time he occupies such relationship in respect of any such contract or agreement. R. S. M. c. 96, s. 13.

And no party holding office entitling to emolument:

15. No person accepting or holding any office, commission or employment, to which any fee, allowance or emolument in lieu of an annual salary from the Crown through the Government of the Province of Manitoba is attached, and no person becoming a party to any contract or agreement by which he derives, or expects to derive, any profit from the Crown, shall be eligible as a member of the Legislative Assembly or shall sit or vote in the same during the time he holds such office, occupation or employment, or is a party to any such contract or agreement. R. S. M. c. 96, s. 14.

Shareholders and directors of incorporated company having contract with Government not disqualified:

16. Nothing contained in this Act shall extend to disqualify any person as a member of the Legislative Assembly by reason of his being a shareholder in or director of any incorporated company having a contract or agreement with the Government of Manitoba,

except any company which undertakes a contract for the building of any public work. R. S. M. c. 96, s. 15.

No member of Legislative Assembly of any Province or of Parliament of Canada eligible as member of Legislative Assembly of Manitoba:

17. No person who is a member of any Legislative Council or Legislative Assembly of any Province, now included or which may hereafter be included within the Dominion of Canada, nor any member of the House of Commons or the Senate of the Dominion of Canada, shall be eligible to be nominated for, or elected as, a member of the Legislative Assembly of Manitoba, or shall be capable of sitting or voting in the same; and if any person so declared ineligible shall be elected or returned as member of the said Assembly, his election shall be null and void. R. S. M. c. 96, s. 16.

No returning officer to accept name of member of Parliament until candidate files certificate from Speaker:

18. No returning officer shall accept the name of any member of the House of Commons of Canada, or of any member of any Provincial Legislature in the Dominion of Canada, as a candidate for election, until such member shall have filed with the said returning officer an acknowledgment in writing, from the Speaker of the House of Commons of Canada or of the House of Assembly of such Provincial Legislature, of the resignation of such member's seat in said House of Commons or House of Assembly. R. S. M. c. 96, s. 17.

Election to be void if returned:

19. If any person disqualified or declared incapable of being elected a member of the Legislative Assembly by this Act be nevertheless elected and returned as a member, his election and return shall be null and void. R. S. M. c. 96, s. 18.

When seat is vacant:

20. If any member of the Legislative Assembly, by accepting any office or becoming a party to or interested in any contract or agreement, become disqualified by law to continue to sit or vote in the same, his election shall thereby become void, and the seat of such member shall be vacated and a writ shall forthwith issue for a new election as if he were naturally dead; but he may be re-elected, if he be eligible. R. S. M. c. 96, s. 19.

Exceptions:

21. Nevertheless, whenever any person holding the office of President of the Executive Council, Attorney-General, Provincial Treasurer, Provincial Secretary, Minister of Public Works, Minister of Agriculture and Immigration, Provincial Lands Commissioner, Railway Commissioner for Manitoba, Municipal Commissioner or Minister of Education, or any other member of the Executive Council holding an office under such designation as may have been assigned

to such member, and being at the same time a member of the Legislative Assembly, resigns his office, and within one month after his resignation accepts any of the said offices, he shall not thereby vacate his seat in the said Legislative Assembly. R. S. M. c 96, s. 20.

Penalty for disqualified persons sitting in Legislative Assembly:

22. If any person disqualified by law from being elected to, or sitting or voting in, the Legislative Assembly shall presume to sit or vote therein, he shall be liable to a penalty of two thousand dollars per day for every day he so sits or votes, and such sum may be recovered from him by any person who shall sue for the same, by action of debt, bill, plaint or information, in any court of competent civil jurisdiction in this Province, one-half of such sum to belong to the person so suing, and the other half to belong to and be paid over to the Provincial Treasurer to form part
91 of the Consolidated Revenue Fund of this Province. R. S. M. c. 96, s. 21.

Vacating of Seats.

A member may vacate seat:

23. Any member of the Legislative Assembly may vacate his seat therein in the manner herein provided. R. S. M. c. 96, s. 26.

By declaring his intention from his place:

24. He may openly, in his place in the Legislative Assembly, declare his wish to vacate his seat as a member, and in such case the clerk of the Assembly shall record the same in the journals and the seat of such member shall be forthwith vacated. R. S. M. c. 96, s. 27.

Or resignation in writing to Speaker attested:

25. He may deliver to the Speaker his resignation in writing, under his hand, attested by two witnesses, declaring his resignation of such seat; upon the receipt whereof by the Speaker, whether during a session of the Legislature or not, the seat of such member shall become vacant. R. S. M. c. 96, s. 28.

To two members:

26. If any member of the Legislative Assembly wish to resign his seat, whether during or before any session or in the interval between two sessions of the Legislature, and there be then no Speaker or such member be the Speaker, he may address and cause to be delivered to any two members of the Assembly a resignation in writing with the formalities in the last preceding section mentioned, and upon the receipt thereof by such two members the seat shall become vacant. R. S. M. c. 96, s. 29.

Duty of Speaker or two members on receiving resignation:

27. The Speaker or such two members, as the case may be, upon receiving such declaration or resignation, shall forthwith address

his or their warrant under his or their hand and seal or hands and seals to the clerk of the Executive Council for the issue of a new writ for the election of a member in the place of the member so notifying his intention to resign, and such writ shall issue accordingly. R. S. M. c. 96, s. 30.

Vacancy by death or otherwise, two members may act:

28. Upon any vacancy in the representation of any electoral division, created by death or in any way other than by resignation, any two members of the Legislative Assembly may give notice of the vacancy to the clerk of the Executive Council, and require the issue of a writ to supply the same:

In case of vacancy between a general election and first meeting of Legislature, how to proceed to fill it:

Provided that, if such vacancy occur subsequently to a general election and before the first meeting of the Legislature thereafter, such notice and requisition to the clerk of the Executive Council may be given by two members-elect of said Legislative Assembly, of whose election the said clerk as such shall have had due notice, and such notice and every such notice and requisition given under this section shall be submitted forthwith after its receipt by said clerk to the Lieutenant-Governor, and upon its return by him to said clerk endorsed as approved, the necessary proceedings shall be taken in pursuance thereof as in the case of a notice and requisition under the former part of this section. R. S. M. c. 91.

Rules of general elections applicable in all cases

29. Any election to fill any such vacancy shall in so far as is reasonably practicable be conducted under the same forms, and be subject to the same rules, as would be applicable if there were a general election at the date of the issue of the writ. R. S. M. c. 96, s. 32.

Indemnity to Members.

\$1,500 allowance:

30. In each session of the Legislative Assembly there shall be allowed and be payable to each member attending such session an allowance of fifteen hundred dollars and no more:

Deductions:

Provided, always, a deduction at the rate of eight dollars per day shall be made from the said sessional allowance for every day on which the member does not attend a sitting of the House, or of some committee thereof, provided the House sits on such day; but each day during the session after the first on which the member attends as aforesaid, on which there has been no sitting of the House in consequence of its having adjourned over such day, or on which the member was in the place where the session was held but was prevented by sickness from attending any such sitting as aforesaid, shall be reckoned as a day of attendance.

92 What shall be reckoned as days of attendance:

— at such session, and a member shall, for the purposes aforesaid, be held to be at the place where the session is held whenever he is within three miles of such place. R. S. M. c. 96, s. 33; 1 Geo. 5, c. 24, s. 1.

Allowance how paid:

31. The said compensation may be paid from time to time as the member becomes entitled to it, to the extent of twelve dollars for each day's attendance as aforesaid, but the remainder shall be retained by the Provincial Treasurer until the close of the session, when the final payment shall be made. R. S. M. c. 96, s. 34.

When person is member for only part of session:

32. If any person be from any cause a member of the Legislative Assembly for a part only of any session, he shall be entitled to the sessional allowance hereinbefore mentioned, subject to the deduction aforesaid, for non-attendance as a member, for each day of such session before he was elected or after he ceased to be a member. R. S. M. c. 96, s. 35.

Mileage:

33. There shall be allowed to each member ten cents for each mile of the distance between the constituency for which he is member and the place where the session is held, reckoning such distance going and coming according to the nearest mail route, which distance shall be determined and certified by the Speaker. R. S. M. c. 96, s. 36.

Powers and Privileges of Legislative Assembly.

Legislative Assembly may compel attendance of persons, etc.:

34. The Legislative Assembly may, at all times, command and compel the attendance before such Assembly, or before any committee thereof, or such persons, and the production of such papers and records, as such Assembly or committee may deem necessary for any of its proceedings or deliberations. R. S. M. c. 96, s. 37.

Select committee may examine witnesses upon oath:

35. Any select committee of the Legislative Assembly, to which any private bill or other matter or cause has been referred by the House, may examine witnesses upon oath, upon matters relating to such bill, matter or cause, and for that purpose the chairman or any member of such committee may administer an oath, in the form in this section contained, to any witness, as follows:—

Form of oath:

The evidence you shall give to the committee touching (the case to be mentioned here) and which has been referred to this committee,

shall be the truth, the whole truth and nothing but the truth. So help you God. R. S. M. c. 96, s. 38.

Persons not liable in damage-, for act done under authority of Legislative Assembly:

36. No person shall be liable in damages or otherwise, for any act done under the authority of the Legislative Assembly and within its legal power, or under or by virtue of any warrant or subpoena issued under such authority; all such warrants may command the aid and assistance of all sheriffs, bailiffs, constables and other, and every refusal or failure to give such aid or assistance, when required, shall be an infringement of this Act. R. S. M. c. 96, s. 39.

Or liable for any civil action or prosecution:

37. No member of said Assembly shall be liable to any civil action or prosecution, arrest, imprisonment or damages, by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him, before the said Assembly. R. S. M. c. 96, s. 40.

Except for breach of this Act, no member liable to arrest in civil action:

38. Except for any breach of this Act, no member of said Assembly shall be liable to arrest, detention or molestation for any debt or cause whatever of a civil nature during any session of the Legislature. R. S. M. c. 96, s. 41.

Officers and employees exempt from serving as jurors:

39. During the periods mentioned in the last preceding section, all members, officers and employees of said Assembly and all witnesses summoned to attend before the same or any committee thereof, shall be exempt from serving or attending as jurors before any court of justice in this Province. R. S. M. c. 96, s. 42.

No member to receive compensation for promoting any bill submitted to Assembly:

40. No member of the Legislative Assembly shall accept or receive, either directly or indirectly, any fee, compensation or reward for or in respect of the promoting of any bill, resolution, matter or thing submitted or intended to be submitted to the consideration of the said Assembly or of any committee thereof. R. S. M. c. 96, s. 43.

Or no barrister, etc., who is a partner of any member:

41. No barrister, solicitor or attorney who, in the practice of his profession, is a partner of any member of the Legislative Assembly, shall accept or receive, either directly or indirectly, any fee, compensation or reward as aforesaid. R. S. M. c. 96, s. 44.

Violation of provisions:

42. Any person violating the provisions of either of the two last

preceding sections shall be subject to a penalty of five hundred dollars over and above the amount or value of the fee, compensation or reward accepted or received by him, to be paid with full costs of suit to anyone who shall sue therefore; one-half thereof to be paid to the person so suing, and the other half to His Majesty for the public use of this Province. R. S. M. c. 96, s. 45.

In case judgment recovered against member, his election to be void:

43. If judgment be recorded against any member of the Legislative Assembly for any penalty under this Act, or if, by a resolution of the said Assembly, it be declared that a member thereof has been guilty of a violation of section 44 of this Act, or if, on the trial of an election petition filed within twelve months from the alleged violation, it be found by the judge trying such petition that a member has committed a violation of this Act, the seat of such member shall thereby be vacated, and the election of such member shall thereby become void; and in either case a writ shall issue for a new election, as if he were naturally dead, and the said member shall ipso facto be incapable of being elected to or of sitting in the Legislative Assembly during the then existing or the next succeeding House of Assembly. R. S. M. c. 96, s. 46.

Assembly to have rights and privileges of a court:

44. The said Assembly shall be a court and shall have all the rights and privileges of a court for the purpose of summarily inquiring into and punishing the acts, matters and things following,—

Assaults upon members:

(a) assaults, insults or libels upon members of the Legislative Assembly during the session of the Legislature;

Intimidating members:

(b) obstructing, threatening or attempting to force or intimidate members of said Assembly;

Offering or accepting bribe.

(c) the offering to or acceptance of a bribe by any member of said Assembly to influence him in his proceedings as such, or the offering to or acceptance of any fee, compensation or reward by any such member for or in respect of the promotion of any bill, resolution or matter or thing submitted to or intended to be submitted to the said Assembly or any committee thereof;

Assault upon officers:

(d) assaults upon, or interference with, officers of said Assembly, while in the execution of their duty;

Tampering with witness:

(e) tampering with any witness in regard to evidence to be given by him before said Assembly, or any committee thereof;

Presenting to Assembly forged document:

(f) presenting to said Assembly, or to any committee thereof, any forged or falsified document, with intent to deceive such Assembly or committee;

Forging records or documents of Assembly:

(g) forging, falsifying or unlawfully altering any of the records of such Assembly, or of any committee thereof, or any document or petition presented or filed, or intended to be presented or filed, before said Assembly or committee, or the setting or subscribing, by any person, of the names of any other persons to any such document or petition with intent to deceive;

Bringing any action or causing arrest of any member of Assembly for anything done in House:

(h) the bringing of any civil action or prosecution against, or the causing or affecting of any arrest or imprisonment of, any member of said Assembly, for or by reason of any matter or thing brought by him by petition, bill, resolution, motion or otherwise, or said by him, before said Assembly;

Arrest or detention of any member in civil cause:

(i) the causing or effecting of the arrest, detention or molestation of any member of said Assembly for any debt or cause whatever of a civil nature, during any session of the Assembly.

94 Assembly may exercise powers and jurisdiction:

(2) For the purposes of this Act, the said Assembly is hereby declared to possess all such powers and jurisdiction as may be necessary or expedient for inquiring into, judging and pronouncing upon the commission or doing of any such acts, matters or things, and awarding and carrying into execution the punishment thereof provided for by this Act. R. S. M. c. 96, s. 47.

Upon enquiry if acts appear to have been committed, person liable to imprisonment during session then being held:

45. Every person who, upon any such inquiry, appears to have committed or done any of the acts, matters of things in the last preceding section mentioned, in addition to any other penalty or punishment to which he may by law be subject, shall be liable to an imprisonment for such time, during the session of the Legislative Assembly then being held, as may be determined by the Assembly. R. S. M. c. 96, s. 48.

Determination of Assembly to be final:

46. The determination of the Legislative Assembly upon any proceeding under this Act shall be final and conclusive. R. S. M. c. 96, s. 49.

In case of prosecution on account of publication of any copy of report of Assembly, defendant may verify by his affidavit:

47. In case of any civil proceeding or prosecution against any person for, or on account of, or in respect of, the publication of any copy of any report, paper, votes or proceedings of said Assembly, the defendant, at any stage of the proceedings, may lay before the court or judge such report, paper, votes or proceedings and such copy, with an affidavit verifying such report, paper, votes or proceedings and the correctness of such copy; and the court or judge shall immediately stay such civil proceedings, and the same and every writ or process issued thereon shall be finally put an end to, determined and superseded by virtue of this Act. R. S. M. c. 96, s. 50.

Person may show such report was published without malice:

48. It shall be lawful in any civil proceeding against any person for printing any extract from, or abstract of, any such report, paper, votes or proceedings, to give in evidence, under the general issue or denial, such report, paper, votes or proceedings, and to show that such extract or abstract was published bona fide and without malice, and if such shall be the opinion of the court, or of the jury,

Verdict to be entered for defendant:

as the case may be, judgment shall be rendered or a verdict shall be entered for the defendant. R. S. M. c. 96, s. 51.

Journals may be admitted as evidence in courts:

49. In any such proceeding, any copy of the journals of the Legislative Assembly, printed or purporting to be printed by the order of the same, shall be admitted as evidence of such journals, by all courts, justices and others, without any proof being given that such copies were so printed. R. S. M. c. 96, s. 52.

No member to be deprived of rights or privileges by this Act:

50. Except so far as is provided in this Act, nothing herein contained shall be construed to deprive the Legislative Assembly, or any committee or member thereof, of any rights, immunities, privileges or powers which the said Assembly, committee or member might, but for this Act, have been entitled to exercise or enjoy. R. S. M. c. 96, s. 53.

Debates to be grave and orderly:

51. To the end that all the debates in the Legislative Assembly be grave and orderly, and that all interruptions should be prevented,—

Members making disturbance, Speaker may call upon member by name:

(a) if any member of the Assembly shall make any disturbance or act in a disorderly manner whilst any member shall be orderly debating, or whilst any bill, order or other matter shall be reading or

opening, the Speaker shall call upon the member by name making such disturbance;

If member does not refrain, Speaker may censure and direct sergeant-at-arms to take into custody:

(b) if such member shall thereupon not refrain from such disturbance or disorderly conduct, and shall not forthwith make due amends to the Assembly therefor, the Speaker shall thereupon censure such member and shall direct him to be taken into custody by the sergeant-at-arms and detained in such custody for such period as the Speaker shall order:

95 If Assembly in committee when such disturbance arise, committee to rise and chairman to inform Speaker of such disorder:

(e) if the Assembly shall be in committee of the whole when any such disorder or disturbance shall take place, the committee shall forthwith rise, report progress and ask leave to sit again, and the chairman shall inform the Speaker of the fact of such disorder, whereupon the Speaker shall deal herewith in the manner hereinbefore provided for as fully and effectually and in all respects as if such disorder had taken place while he was occupying the chair. R. S. M. c. 96, s. 54.

JOHN ALLEN, duly sworn saith as follows:

I am a practising Barrister and Attorney for the Province of Manitoba, in the City of Winnipeg, in the Dominion of Canada. I am Deputy Attorney-General for the Province of Manitoba. I am familiar with the Criminal Law of Canada which is found in the Criminal Code, Chapter 146 of the Revised Statutes of Canada, 1906, and amending Acts. The Criminal Law is the same for all Canada, being enacted by the Parliament of Canada at Ottawa. By the Criminal Code of Canada, Section 174, every one is guilty of an indictable offence and liable to fourteen years' imprisonment who commits perjury or subornation of perjury. By the said Criminal Code, Section 170, perjury is an assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in a judicial proceeding as part of his evidence, upon oath or affirmation, whether such evidence is given in open court, or by affidavit or otherwise, and whether such evidence is material or not, such assertion being known to such witness to be false, and being intended by him to mislead the court, jury or person holding the proceeding. By the said Criminal Code, Section 171, Sub-section 2, every proceeding is judicial which is held in or under the authority of any court of justice, or before a grand jury, or before either the Senate or House of Commons of Canada, or before any legislative council, legislative assembly or house of assembly or any committee thereof, empowered by law to administer an oath, or before any justice, or any arbitrator or umpire, or any person or body of persons authorized by law or by any statute in force for the time being to make an inquiry and take evidence therein upon oath, or before

any legal tribunal by which any legal right or liability can be established, or before any person acting as a court, justice or tribunal, having power to hold such judicial proceeding, whether duly constituted or not, and whether the proceeding was duly instituted or not before such court or person so as to authorize it or him to hold the proceeding, and although such proceeding was held in a wrong place or was otherwise invalid.

The Public Accounts Committee of the Legislative Assembly of the Province of Manitoba is one of the select standing committees appointed by the Legislative Assembly of the Province of Manitoba, to examine and inquire into the public accounts of the Province of Manitoba for the year preceding the appointment of said committee, and also into all matters pertaining to the said public accounts. Section 35 of "The Legislative Assembly Act" of the Province of Manitoba, being Chapter 112 of R. S. M., 1913, empowers the said Public Accounts Committee to examine witnesses on oath. Such a committee as the Public Accounts Committee, aforesaid, forms an important part of the legislative machinery under the British form of Government.

I have perused the depositions attached hereto, and, in my opinion, the evidence disclosed by the said depositions shews the crime of perjury, aforesaid, under the Laws of Canada.

WILLIAM SALT, being duly sworn, upon his oath saith:

I have been a registered architect in the Province of Manitoba, in the Dominion of Canada, since 1914, and prior to that time was for about four years working in architects' offices, and with building contractors in the City of Winnipeg. I commenced working under Victor W. Horwood, provincial architect, in connection with the new parliament buildings being erected by the Manitoba government at the City of Winnipeg aforesaid during the first week of September, 1913, and was working continuously either in his office or on the building itself until March 12, 1915. About the first week of September 1913 I commenced working as assistant inspector under the chief inspector W. A. Elliott and provincial architect Horwood on the construction of the caissons for the said parliament buildings, the work on said caissons having commenced about a week before. I have had fifteen years' experience in the mixing of concrete. Under the specifications which were drawn up for use in the construction of the said parliament buildings all the mixtures of concrete therein specified would require at least
 96 one and one-half barrels of cement to make a yard of concrete as specified.

LEOPOLD VILLEROY, being duly sworn, upon his oath, saith:

I was an inspector in the employ of the Manitoba Government on the construction of the new parliament buildings in the City of Winnipeg, in the Province of Manitoba, in the Dominion of Canada, which said buildings were being constructed by Thomas Kelly & Sons, of which firm Thomas Kelly of the said City of Winnipeg, contractor, was a member. My main duty was to inspect the concrete which went into the caissons in the said buildings, and the

instructions I had were, to, watch that 8 wheelbarrows of gravel or sand to the yard, and one barrel of cement to the yard were put in, and for each 8 wheelbarrow loads of gravel or sand that one barrel of cement should go in. The concrete mixer held half a yard, and into each mixture went two sacks of cement and four wheelbarrows of gravel or sand or whatever was used. Two sacks of cement are equal to half a barrel, and there was never more than half a barrel of cement to half a yard of concrete, or never more than one barrel of cement to one yard of concrete.

The said Thomas Kelly was on the work very frequently, and knew the proportion of the cement mixed in the concrete, and frequently insisted upon the employees heaping up the gravel or stone in the barrows so that the proportionate amount of cement in the concrete mixture would be lessened.

Now shown to me marked Exhibit L is a photograph which is a very good likeness of the said Thomas Kelly. I recognize the said photograph as that of the Thomas Kelly herein referred to.

J. H. G. RUSSELL, being duly sworn, upon his oath, saith:

I am an architect carrying on business in the City of Winnipeg, in the Province of Manitoba, Canada, and have been so carrying on business for many years. I had excavations made alongside fifteen caissons covering the whole area under the New Parliament Buildings in the said City of Winnipeg from the top of the caissons to rock and found that with the exception of two caissons which had been previously pointed out to me by V. W. Horwood, late

Provincial Architect, to have been exceptional, the depth 96½ to rock under the building area of the New Parliament

Building varied from one foot four and a half inches for the area under the south wing and center portion, and seven and a half inches for the area under the north wing. Based upon the investigation which I have conducted I calculated the total cubic yards of material in the caissons under the New Parliament Buildings at 21,327 cubic yards, making a liberal allowance to the contractors for everything. I examined said caissons and took samples of the material therein. The concrete was not reinforced with the exception of the bell in caisson No. 6. The crushing strength of such samples as could be tested ranged from 466 lbs. to 4,258 lbs. per square inch, showing the concrete to run from very poor to very good. The other samples taken could not be tested, as they ranged from gravel to the poorest sample tested. There was no uniformity in the quantities of the different materials used and some of the material now in the caissons cannot be designated as concrete at all, it consists merely of gravel. By the specifications of the contract of July 16th, 1913, one part of Portland Cement, two parts of sand and four parts of crushed stone were called for, but this has not been adhered to. No crushed stone was found in any of the samples taken from the caissons. In none of the caissons were any lumber or iron rings found, except in the bottom of one and the top of another one. I have also made a valuation of the work done and materials on the site of the said Parliament Buildings and find the total value of the work executed up to the 12th day of

May, 1915, is \$77,593.73, aside from the sewer contract, the price of which was \$7,040, and the value of which sewer I find is \$2,598.60. The value of the material on the ground and not used I find to be \$144,704.68. I find the value of the caissons to be, at an outside valuation \$228,198.90, allowing a reasonable profit to the contractor.

PETER GORDON MCTAVISH, being duly sworn, upon oath saith:

I am accountant in the Provincial Architect's office in the city of Winnipeg, in the Province of Manitoba, in the Dominion of Canada, and have occupied that position for several years. I was in charge of the applications for payment made by Thomas Kelly & Sons for work done in respect of the new parliament buildings in the said city of Winnipeg. Some of the applications were handed to me by V. W. Horwood, the Provincial Architect. The other applications were handed to me by Lawrence C. Kelly, one of the members of the firm of Thomas Kelly & Sons. These applications were generally accompanied by a letter from the said firm asking for payment for the amount specified in the estimate or application on account of materials supplied and work done in respect of the said new parliament buildings, and asking that the estimate be put through promptly. Most of these were signed by Lawrence C. Kelly on behalf of the firm. Believing in and acting upon the correctness of these applications I made out certificates for signature by the provincial architect certifying that the said firm of Thomas Kelly & Sons were entitled to be paid in respect of said estimates, the amounts set out in said certificates. I did not make out and I would not have made out certificates for signature by the Provincial Architect, until I received from the said firm of Thomas Kelly & Sons applications for payment: and said firm would not have received payments, had they not sent in such applications.

I was in charge of the files containing letters received by the said Provincial Architect's office and I have made a search in the said files and find that a great many letters and other documents are missing therefrom, including all of the letters from Thomas Kelly & Sons, enclosing applications for payments, sometimes called "progress estimates," now shewn to me and marked Exhibits 1 to 20 inclusive.

Now shewn to me marked Exhibit 21 is a cut of Thomas Kelly, the senior member of said firm of Thomas Kelly & Sons, and I say that the same is a good likeness of the said Thomas Kelly.

STEPHEN CLIFFORD OXTON, being duly sworn, upon his oath saith:

I am Special Assistant to the present Minister of Public Works of the government of the Province of Manitoba, in the Dominion of Canada. During the months of April and May, 1915, a Royal Commission appointed by the late Manitoba Government to investigate all matters relating to the construction of the new parliament buildings at Winnipeg aforesaid was holding sittings in the court house at the said city of Winnipeg, and Mr. F. H. Phippen acted as counsel for the firm of Thomas Kelly & Sons, contractors,

97½ for the erection of the said new parliament buildings. I was present in court on one occasion during the sittings of the said Royal Commission when the said Phippen on behalf of the said firm of Thomas Kelly & Sons produced invoices for cement from the Canada Cement Company and the Lake Winnipeg Shipping Company to Thomas Kelly & Sons, which he said were all the invoices for all cement used in the caissons of the new parliament buildings. I tabulated all of the said invoices on the afternoon of their production before the said Commission. My tabulation showed that a total of 23,834 barrels of cement were received by Thomas Kelly & Sons on the said work prior to the 1st day of March, 1914, by which date the said caissons had been completed.

On the basis of one and one-half barrels of cement to each yard of concrete, which Mr. Kelly in his evidence before the Public Accounts Committee of the Manitoba legislature in March, 1915, stated in my presence under oath was the proportion that was used in the caisson construction, there would be 15,890 cubic yards of concrete in the caissons. The total invoices for cement produced contained invoices of 7,732 barrels delivered at the work between May 7th, 1914, and August 3, 1914, which was the last date up to which invoices for cement were produced.

The photograph now shewn to me and marked Exhibit 1 is a very good likeness of the said Thomas Kelly. I recognize the photograph as that of the said Thomas Kelly herein referred to.

NELLIE ROBERTSON OGSTON, being duly sworn, on oath saith:

I am a stenographer and typewriter living at the city of Winnipeg, in the Province of Manitoba, in the Dominion of Canada. During the month of March, 1915, I was employed by William F. Perkins, official court stenographer to take down and transcribe evidence taken before the Public Accounts Committee of the Legislature of the Province of Manitoba at the parliament buildings, at the city of Winnipeg aforesaid, when the construction of the new parliament buildings at the said city of Winnipeg and the payments made therefor were being inquired into.

I was present at a meeting of the said Public Accounts Committee on the 25th day of March, 1915, on which day Thomas Kelly of Winnipeg aforesaid, contractor, was duly sworn as a witness by E. L. Taylor, Esq., Chairman of the said Committee, when the prescribed statutory oath of a witness was made by the said Thomas Kelly, who was called as a witness in the said inquiry.

98 The photograph now shewn to me and marked Exhibit 1 is a good likeness of the said Thomas Kelly, to whom the said oath was so administered at the said meeting of the said public account committee.

WILLIAM KILLEY, being duly sworn, on oath saith:

I am a shorthand reporter and typewriter residing at the city of Winnipeg, in the Province of Manitoba, in the Dominion of Canada. During the month of March, 1915, I was employed by William F. Perkins, official court stenographer, to take down and transcribe evidence taken before the Public Accounts Committee of the Legisla-

ture of the Province of Manitoba, at the parliament buildings, at the city of Winnipeg aforesaid, when the construction of the new parliament buildings at the said city of Winnipeg and the payments made therefor were being inquired into.

I was present at a meeting of the said Public Accounts Committee on Friday, the 26th day of March, A. D. 1915, and the following is a true transcript of my notes taken in shorthand at the time of the questions put to and answer made by Thomas Kelly of the city of Winnipeg aforesaid, contractor, duly examined before the said Public Accounts Committee in reference to the construction of the caissons of the new parliament buildings at Winnipeg aforesaid by the firm of Thomas Kelly & Sons, of whom the said witness Thomas Kelly was a member. The said statements by the said Kelly being made under oath duly administered by the Chairman of the said committee, Mr. E. L. Taylor on the previous day, the 25th day of March, 1915. The letter "Q" herein standing for the word "question," and the letter "A" standing for the following answer:

Q. In what proportions were the ingredients in the concrete in the caissons?

A. One, two and four, or one and six. One of cement, two of sand, and four of broken stone.

Q. How much cement does it take with these proportions to make a yard of concrete?

A. A little over a barrel and a half.

Q. How much sand?

98½ A. We make it a habit of figuring on half a yard of sand and a yard of broken stone.

Q. Half a yard of sand—and how much broken stone?

A. A yard.

Q. And a barrel and a half of cement?

A. About a barrel and a half.

Q. One and a half barrels of cement and half a yard of sand and one yard of stone make up a yard of concrete?

A. That is what we have always based on. You may get some authority that says less. They probably take it and measure it in the box.

Q. How many bags in a barrel of cement?

A. Four.

The photograph now shewn to me and marked Exhibit 1 is a good likeness of the said Thomas Kelly, to whom the said oath was so administered at the said meeting of the said Public Accounts Committee.

JOHN WOODMAN, being duly sworn, on oath, saith:

I am a civil engineer and architect and have had an extended building experience in Winnipeg, and Western Canada, including many buildings of reinforced concrete and of steel construction. I was instructed by the Royal Commission investigating the parliament building in Winnipeg, in the Province of Manitoba, Canada, to inspect and report upon the construction of said buildings and the materials used therein. I went down excavations made alongside about fifteen caissons under the said parliament buildings, going down to

rock and inspected same, and took samples of the material in said caissons. The quality of the concrete in the said caissons was not what it should have been. The contractor did not follow the specifications now shewn to me which call for a mixture of 1 part cement, 2 sand, and 4 broken stone; but used pit gravel in place of stone and sand. Mr. Thomas Kelly, the senior member of the firm of Thomas Kelly & Sons was on the parliament buildings with me in June last inspecting the foundations. He stated to me that the said firm did not use more than one barrel to the yard of gravel. One barrel of cement to the yard of gravel would be the same proportion of cement as in a mixture of approximately 1 part cement, 3 parts sand, and 6 parts broken stone. From my observations I say that this mixture was generally used in the north wing. I saw nothing to indicate the

99 use of any higher proportion of cement except in isolated instances. But in the south wing and central portion it is quite clear that this amount of cement, viz.: 1 barrel of cement to the cubic yard of gravel was not used. There was much variation in the quality of concrete found, some samples of material from the caissons showing scarcely a trace of cement. A great deal of the material in the caissons has so small a proportion of cement as to be quite improper for caisson purposes and sections of the so-called concrete in the caissons could not properly be called concrete at all.

The photograph now shewn to me and marked Exhibit 1 is a very good likeness of the said Thomas Kelly. I recognize the photograph as that of the said Thomas Kelly herein referred to.

Deposition of Geoffrey H. Walker.

GEOFFREY H. WALKER, having been first duly sworn, deposeth as follows:

I am the Prothonotary of the court of King's Bench for the Province of Manitoba and have been such for over thirty years. I was also Registrar of the Royal Commission appointed to investigate the construction of the parliament buildings in the city of Winnipeg, and payments made in respect thereof and all matters relating thereto. Mr. F. H. Phippen, K. C., appeared there with Thomas Kelly, for Thomas Kelly & Sons, and acted as counsel on behalf of said firm before said Royal Commission. On the 29th day of April, 1915, the said F. H. Phippen produced 45 invoices of the cement used by said Thomas Kelly & Sons in the construction of said parliament buildings and said they covered the cement used in the said building.

Exhibit 1, Deposition C. H. Dancer. Oct. 11/1915.

Ex. 1. Deposition W. Killes. Oct. 12/15.

Ex. 1. P. G. McTavish. Oct. 11/1915.

Ex. 1. Deposition of N. R. Ogston. Oct. 11/15.

Ex. 1. Deposition of J. B. Prestens. Oct. 12/15.

Ex. 1. Deposition of S. C. Oxtun. Oct. 12/15.

Exhibit 1. Deposition of N. R. Ogston. Oct. 12/1915.

Exhibit 1. Deposition Jn. Woodman. Oct. 12/1915.

Exhibit 1. Deposition L. Villerey. Oct. 11th, 1915.

(Cut of Thomas Kelly.)

HUGH J. MACDONALD, P. M.

EXHIBIT 1.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT

Progress Estimate No. 1.

Building: New Parliament Building at Winnipeg, Man.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$35,700.00 for work done to date as per this detailed statement. Date of Contract, July 16, 1913. Certificate No. 1317, issued Aug. 20, 1913.

Thomas Kelly & Sons, Contractors.

August 22, 1913.

No.	Balance to Complete	Detailed amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$15,959.50	\$ 57,989.50	Excavators Work, Drains, Etc.	\$42,000.00		\$42,000.00

2		169,746.50	Concrete Footings & Foundations Walls, Etc.			
3		54,895.00	Stone Masons' Work			
4		229,040.60	Reinforced Concrete Work			
5		995,465.00	Cut Stone Work, Carving, Etc.			
6		336,452.00	Brickwork (Common Brick)			
7		35,634.00	Hollow Tile Partitions, Floors, Etc.			
8		277,612.40	Carpenter and Joiner Work			
9		20,000.00	Hardware			
10		41,500.00	Structural Steel Work			
11		180,784.00	Ornamental Iron & Metal Work			
12		29,990.00	Tinsmiths' & Sheet Metal Work			
13		103,377.00	Plasterers' Work			
14		219,067.00	Marble & Tile Work			
15		42,000.00	Painting			
		64,060.00	Concrete Piles			
		2,177.00	Plumbing			

\$2,859,700.00

Totals	\$42,900.00	\$42,000.00
Less 15%	6,300.00	6,300.00
	\$35,700.00	\$35,700.00

Amount of this Estimate

\$35,700.00

Certified Correct,
"W. A. Elliott" Inspector.

EXHIBIT 2.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 2.

To the Provincial Architect, Winnipeg. Sir:—We hereby make application for a payment of \$20,084.65 for work done to date as per this detailed statement. Date of contract, July 16, 1913. Certificate No., 1,378, issued Oct. 6, 1913.

Building: New Parliament Building, at Winnipeg, Man.

September 27th, 1913.

Thos. Kelly & Sons, Contractors.

Value of Work Done to Date
Amount of Previous Payments
Amount asked per this Estimate

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$ 310,959.50	\$ 557,959.50	Excavators Works, Drains, etc.	\$47,000.00	\$42,000.00	\$ 5,000.00
2		189,748.50	Concrete Footings and Foundations Walls, etc.			
3		34,895.00	Stone Masons' Work			
4		229,040.60	Reinforced Concrete Work			
5		995,465.00	Cut Stone Work, Carving, Etc.			
6	317,823.00	336,452.00	Brickwork (Common Brick)	18,629.00		18,629.00
7		35,634.00	Hollow Tile Partitions, Floors, Etc.			
8		277,612.40	Carpenter and Joiner Work			
9		20,000.00	Hardware			
10		41,500.00	Structural Steel Work			
11		186,784.00	Ornamental Iron & Metal Work			
12		29,990.00	Tinsmiths' & Sheet Metal Work			
13		103,377.00	Plasterers' Work			
14		219,067.00	Marble & Tile Work			
15		42,000.00	Painting			
16		64,050.00	Concrete Piles			
17		2,177.00	Plumbing			
Totals	\$2,530,967.50	\$2,839,750.00		\$65,629.00	\$42,000.00	\$23,629.00
Less 15%				9,844.35	6,300.00	3,544.35
Less Previous Payments				\$55,784.65	\$35,700.00	\$20,084.65
Amount of this Estimate				35,700.00		
				\$20,084.65		

Certified Correct,

"W. A. Elliott," Inspector.

EXHIBIT 3.

Deposition, P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.
APPLICATION FOR PAYMENT.

Progress Estimate No. 3.

Building: Parliament, at Winnipeg, Man.

To the Provincial Architect, Winnipeg. Sir:—We hereby make application for a payment of \$42,500.00 for work done to date as per this detailed statement. Date of contract, July 16th, 1913. Certificate, No. 2,011, issued May 30, 1914.
Thos. Kelly & Sons, Contractors.

Winnipeg, May 19th, 1914.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$ 10,959.60	\$ 57,959.50	Excavators Works, Drains, etc.	\$ 7,000.00	\$47,000.00	
2		169,746.50	Concrete Footings & Foundations Walls, etc.			
3		54,895.00	Stone Masons' Work			
4		229,040.60	Reinforced Concrete Work			
5		995,465.00	Cut Stone Work, Carving, etc.	50,000.00		50,000.00
6	317,823.00	336,452.00	Brickwork (Common Brick)	18,629.00	18,629.00	
7		35,634.00	Hollow Tile Partitions, Floors, Etc.			
8		277,612.40	Carpenter and Joiner Work			
9		20,000.00	Hardware			
10		41,500.00	Structural Steel Work			
11		180,784.00	Ornamental Iron & Metal Work			
12		29,990.00	Tinsmiths' & Sheet Metal Work			
13		103,377.00	Plasterers' Work			
14		219,067.00	Marble & Tile Work			
15		42,000.00	Painting			
		64,050.00	Concrete Piles			
		2,177.00	Plumbing			
		<u>\$2,059,750.00</u>				
			Totals	\$115,629.00	\$65,629.00	\$50,000.00
			Less 15%	17,344.35	9,844.35	7,500.00
			Less previous payments	\$ 96,284.65	\$55,784.65	\$42,500.00
			Amount of this Estimate	\$ 42,500.00		

Deposition. P. G. McTavisk, Oct. 12, 1915. Hugh J. Macdonald, P. M.
EXHIBIT 4.
APPLICATION FOR PAYMENT.

Progress Estimate No. 4.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$131,750.00 for work done to date as per this detailed statement. Date of contract, July 16, 1913. Certificate No. 2014, issued June 19, 1914.

Building: Parliament, at Winnipeg.

June 18th, 1914

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Thos. Kelly & Sons, Contractors.	
				Value of Work done to Date	Amount asked per this Estimate
1	\$10,959.50	\$57,959.50	Excavators Works, Drains, Etc.	\$47,000.00	\$47,000.00
2	159,746.60	169,746.50	Concrete Footings & Foundations Walls, Etc.		\$10,000.00
3		54,895.00	Stone Masons' Work		
4	845,465.00	229,040.60	Reinforced Concrete Work		
5	227,823.00	995,465.00	Cut Stone Work, Carving, Etc.	100,000.00	50,000.00
6	50,634.00	336,452.00	Brickwork (Common Brick)	108,629.00	90,000.00
7		277,612.40	Hollow Tile Partitions, Floors, Etc.	5,000.00	5,000.00
8		20,000.00	Carpenter and Joiner Work		
9		41,500.00	Hardware		
10		180,784.00	Structural Steel Work		
11		29,990.00	Ornamental Iron & Metal Work		
12		103,377.00	Tinsmiths' & Sheet Metal Work		
13		19,067.00	Plasterers' Work		
14		42,000.00	Marble & Tile Work		
15		64,050.00	Painting		
		2,177.00	Concrete Pilcs		
			Plumbing		
Totals				\$270,629.00	\$115,629.00
Less 15%				40,594.35	17,344.35
Less Previous Payments				\$230,034.65	\$98,284.65
Amount of this Estimate				\$131,750.00	\$131,750.00

EXHIBIT 3.

Deposition. P. G. McTavish, Oct. 12, 1915: Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

regress Estimate No. 5.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$107,950.00 for work done to date as per this detailed statement. Date of contract, July 13th, 1913. Certificate No. 2017, issued July 31, 1914.

Thos. Kelly & Sons, Contractors.

July 28th, 1914

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$ 10,959.50	\$ 57,959.50	Excavators Works, Drains, Etc.	\$ 47,000.00	\$ 47,000.00	
2	154,746.50	169,746.50	Concrete Footings & Foundations Walls, Etc.	15,000.00	10,000.00	\$ 5,000.00
2	4,895.00	54,985.00	Stone Masons' Work	50,900.00		50,000.00
3		229,040.60	Reinforced Concrete Work			
4	800,465.00	995,465.00	Cut Stone Work, Carving, Etc.	145,000.00	100,000.00	45,000.00
5	200,823.00	336,452.00	Brickwork (Common Brick)	135,629.00	108,629.00	27,000.00
5	30,634.00	35,634.00	Hollow Tile Partitions, Floors, Etc.	5,000.00	5,000.00	
6		277,612.40	Carpenter and Joiner Work			
6		20,000.00	Hardware			
7		41,500.00	Structural Steel Work			
7		180,784.00	Ornamental Iron & Metal Work			
8		29,990.00	Tinsmiths' & Sheet Metal Work			
9		103,377.00	Plasterers' Work			
11		219,067.00	Marble & Tile Work			
12		42,000.00	Painting			
14		64,050.00	Concrete Piling			
15		2,177.00	Plumbing			
		\$2,859,750.00	Totals	\$397,629.00	\$270,629.00	\$127,000.00
			Less 15%	59,644.35	40,594.35	19,050.00
			Less Previous Payments	\$337,964.65	\$40,594.35	\$19,050.00
			Amount of this Estimate	230,034.65		
				\$107,950.00		

COPY
of
APPLICATIONS FOR PAYMENT.
re Parliament Buildings.

EXHIBIT 7.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. MacDonald, P. M.

Attached to an "application for payment" form.

Thos Kelly and Sons,

Winnipeg, Nov. 17, 1913.

Provincial Government, Dept. of Public Works.

Progress estimate #1.

Caisson Foundation. New Parliament Bldg.

To labor and materials supplied for above as follows:

Concrete with reinforcing,			
Cubic yards.	7317	@ \$12.00	\$87804.00
Excavation	7317	@ 7.00	51219.00
Timbering. B. M. feet	246560	@ 40.00	9862.40
Iron caisson rings and bolts	324280	lbs. @ .07	22699.50
			<hr/>
			\$171585.00
Less 15%			25737.75
			<hr/>
Net			\$145847.25

(Approximately 9871 cub. yds. concrete put in to date—
 Nov. 18/13. W. A. Elliott.)

EXHIBIT 8.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. McDonald, P. M.

Thos. Kelly and Sons.

WINNIPEG, December 2, 1913.

Provincial Government, Department of Public Works, City.

Progress Estimate No. 2.

Caisson Foundation. New Parliament Building.

To labor and materials supplied for above as follows:

Concrete with reinforcing.

Cubic yards.....	13431	@	\$12.00	\$161172.00
Excavation	13431	@	7.00	94017.00
Timbering, B. M. feet.....	452640	@	40.00	18105.60
Iron caisson rings and bolts.....	59320	lbs. @	.07	41672.40

	\$314967.00
Less 5%.....	47245.05

	\$267721.95
Less estimate No. 1 paid.....	145847.25

Amount of this estimate.....\$121874.70

EXHIBIT 9.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

Thos. Kelly and Sons.

WINNIPEG, January 9, 1914.

Provincial Government, Department of Public Works.

City.

Progress Estimate No. 3.

Caisson Foundation. New Parliament Building.

To labor and materials supplied for the above as follows:

Concrete with reinforcing.

Cubic yards.....	19357	@	\$12.00	\$232284.00
Excavation ".....	19357	@	7.00	135499.00
Timbering, B. M. feet.....	734160	@	40.00	29366.40
Iron caisson rings and bolts.....	965580	lbs. @	.07	67590.60

	\$464740.00
Less 15%.....	69711.00

	\$395029.00
Less estimate 1 and 2 paid.....	267721.95

Amount of this estimate.....\$127307.05

104 EXHIBIT 10.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

Thos. Kelly and Sons.

Winnipeg.

Provincial Government, Department of Public Works.

Progress Estimate #4.

Caisson Foundation. New Parliament Building.

To labor and materials supplied for above as follows:

Concrete with reinforcing,				
Cubic yards.....	27680	@	\$12.00	\$332160.00
Excavation ".....	27680	@	7.00	193760.00
Timbering, B. M. feet.....	1015M	@	40.00	40600.00
Iron Caisson rings and Bolts....	667 tons	@	140.00	93380.00
				<hr/>
				\$659900.00
Less 15%.....				98985.00
				<hr/>
				\$560915.00
Less estimates 1. 2 & #.....				395029.00
				<hr/>
Amount of this estimate.....				\$165886.00

EXHIBIT 11.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

Thos. Kelly and Sons,

WINNIPEG, March 7, 1914.

Provincial Government, Department of Public Works.

Progress Estimate #5.

Caisson Foundation, New Parliament Building.

To labor and material supplied for above as follows:

Concrete with reinforcing,				
Cubic yards	35,993	@	\$12.00.....	\$431,916.00
Excavation ".....	35,993	@	7.00.....	251,951.00
Timbering, B. M. feet	1,213 M.	@	40.00.....	48,520.00
Iron caisson rings and bolts, 797.5 tons @			140.00...	111,650.00
				<hr/>
				\$844,037.00
Less 15%				126,605.55
				<hr/>
				\$717,431.45
Less estimates 1, 2, 3, 4.....				560,915.00
				<hr/>
Amount of this estimate.....				\$156,516.00

EXHIBIT 12.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

Thos. Kelly and Sons,

Winnipeg, April 10, 1914.

Provincial Government, Department of Public Works.

Progress estimate #6 final.

Caisson Foundation. New Parliament Building.

To labor and materials supplied for above as follows:

Concrete with reinforcing,

Cubic yards	35993 @	\$12.00	\$431916.00
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Excavation	"	35993 @	7.00	251951.00
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Timbering. B. M. feet	1213M @	40.00	48520.00
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Iron caisson rings and bolts, 797.5 tons @	140.00	111650.00
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\$844037.00

Less estimates 1-5 inclusive

717431.45

\$126605.55

Amount of draw back on estimates #1-5, less

amount included in our tender for concrete piles	64050.00
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Amount of this estimate

\$62555.55

EXHIBIT 14.

Deposition F. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 2.

Building: Parliament at Winnipeg.

July 3d, 1914.

To the Provincial Architect, Winnipeg. Sir:—Hereby make application for a payment of \$85,000 for work done to date as per this detailed statement. Date of contract, Mar. 26, 1914. North wing. Certificate No. 2,015, issued July 8, 1914.
Thos. Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per th's Estimate
7		\$ 230,100.00	Caisson Grillage and Grillage Beams.....	\$ 195,000.00	\$ 95,000.00	\$ 100,000.00
		\$ 230,100.00	Totals.....	\$ 195,000.00	\$ 95,000.00	\$ 100,000.00
			Less 15%.....	29,250.00	14,250.00	15,000.00
			Less Previous Payments.....	\$ 165,750.00	\$ 80,750.00	\$ 85,000.00
			Amount of this Estimate.....	\$ 85,000.00		

EXHIBIT 15.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progres Estimate No. 3.

Building: Parliament at Winnipeg.

July 29th, 1914.

To the Provincial Architect, Winnipeg. Sir:—We hereby make application for a payment of \$29,835.00 for work done to date as per this detailed statement. Date of contract, March 26th, 1914. North wing steel. Thos. Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
7		\$ 230,100.00	Caisson Grillage and Grillage Beams	\$ 230,100.00	\$ 195,000.00	\$ 35,100.00
			Totals	\$ 230,100.00	\$ 195,000.00	\$ 35,100.00
			Less 15%	34,515.00	29,250.00	5,265.00
			Less Previous Payments	\$ 195,585.00	\$ 165,750.00	29,835.00
			Amount of this Estimate	\$ 29,835.00		\$ 29,835.00

EXHIBIT 16.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 1.

Name of Building: Parliament Building, at Winnipeg.

July 3d, 1914

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$157,250.00 made up as per detailed statement below for work done to this date applying against contract dated July 20, 1914. Grillage for dome section and south wing. Certificate 2016, July 8, 1914.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Thos. Kelly & Sons, Contractors.		
				Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
7		\$215,000.00	Caisson Grillage, Grillage Beams and Concrete...	\$185,000.00		\$185,000.00
		\$215,000.00	Totals.....	\$185,000.00		\$185,000.00
			Less 15%.....	27,750.00		27,750.00
				\$157,250.00		\$157,250.00
			Amount of this Estimate.....	\$157,250.00		

EXHIBIT 17.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. McDonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 2.

July 29, 1914.

Building: Parliament, at Winnipeg.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$25,500.00 for work done to date as per this detailed statement. Date of Contract, July 20, 1914. Caisson grillage for Dome section and South Wing. Certificate No. 2020, issued July 30, 1914.

Thomas Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
7		\$215,000.00	Caisson Grillage, Grillage Beams & Concrete. . .	\$215,000.00	\$185,000.00	\$30,000.00
			Totals.....	\$215,000.00	\$185,000.00	\$30,000.00
			Less 15%.....	32,250.00	27,250.00	4,500.00
			Less Previous Payments.....	\$182,750.00	\$157,250.00	\$25,500.00
			Amount of this Estimate.....	\$25,500.00		\$25,500.00

EXHIBIT 18.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 1 and Final.

Building: Parliament, at Winnipeg.

November 25, 1913.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$7,040.00 for work done to date as per this detailed statement. Date of Contract, Aug. 26, 1913, Sewerage system. Certificate No. 2003, issued Dec. 13, 1913.

Thomas Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
		\$7,040.00			\$7,040.00	
			Totals.....	\$7,040.00		\$7,040.00

Certified Correct,
"W. A. Elliott," Inspector.
Nov. 25, 1913.

EXHIBIT 19.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 1.

July 28, 1914.

Building: Parliament, at Winnipeg.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$29,911.50 for work done to date as per this detailed statement. Date of Contract, May 22, 1914. Changing rubble walls in basement to brick. Certificate No. 2019, issued July 31, 1914.

Thomas Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
5			Brickwork (Common Brick).....	\$35,190.00		\$35,190.00
			Totals.....			\$35,190.00
			Less 15%.....			5,278.50
			Amount of this Estimate.....	\$29,911.50		\$29,911.50

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EXHIBIT 20.

Deposition P. G. McTavish. Oct. 12, 1915. Hugh J. Macdonald, P. M.

Attached to "application for payment" form.

WINNIPEG, Dec. 15th, 1913.

Provincial Government of Manitoba,

Department of Public Works.

Re New Parliament Buildings.

To excavating done previous to moving site of building
40.0 to the south 1506 yards @ \$1.50..... \$2,259.00

O. K. as regards number of yards.

(Signed)

W. A. ELLIOTT, *Inspector.*

Note: Price of excavating reduced from \$2 per cubic yards to \$1.50.

Certified correct.

(Signed)

V. W. HORWOOD,
Provincial Architect.

March 4/14.

109½ *Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition.*

CONSULATE GENERAL OF THE UNITED STATES,
WINNIPEG, MANITOBA, CANADA, October 12th, 1915.

I, Frederick M. Ryder, Consul General of the United States at Winnipeg, Canada, hereby certify that the annexed papers being copy of the information of Edward J. Elliott, of the City of Winnipeg, Province of Manitoba, Chief of Provincial Police, copy of warrant; depositions of Geoffrey H. Walker, William Salt, J. Bender Priestman, Paul Schioler, Stephen Clifford Oxtan, Peter Gordon McTavish, Victor William Horwood, Norman Woodruff Warren, Frederick Fearnley, J. H. G. Russell, Leopold Villeroy, H. B. Lyall, William John Ptolemy, John Allen; certificates of Sir Hugh John Macdonald, Police Magistrate and of the Provincial Secretary and the affidavits of James Perkins, Joseph Donovan and Florence M. Kelly, the stenographer who took the depositions and the exhibits therein referred to, proposed to be used upon the application for the extradition from the United States of Thomas Kelly charged with the crime of obtaining money by false pretences alleged to have been committed in the City of Winnipeg in the Province of Manitoba in

the Dominion of Canada are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of the Province of Manitoba in the Dominion of Canada as required by Act of Congress of August 3rd, 1882.

And I further certify that the signature of J. W. Armstrong on page Number 3 of this document at the foot thereof is the proper handwriting of the Honourable James William Armstrong, Provincial Secretary for the Province of Manitoba in the Dominion of Canada.

It Witness Whereof I hereby sign my name and cause the seal of the Consulate General to be affixed this 12th day of October, A. D. 1915.

[SEAL.]

FREDERICK M. RYDER,

Consul General for the United States at Winnipeg, Canada.

(Stamp:) American Consular Service 10/12/15 F. M. R.
\$2 Fee Stamp.

110 In forwarding the annexed papers to be used in support of an application for the surrender from the United States of Thomas Kelly, charged with the crime of obtaining money by false pretences, alleged to have been committed in the City of Winnipeg, in the Province of Manitoba, in Canada.

I hereby certify that the signature on the annexed document certifying to the correctness of the copy of the warrant, information and depositions on which the warrant was granted, and the several Exhibits, is the signature of Sir Hugh J. MacDonald, Police Magistrate in and for the Province of Manitoba and of the City of Winnipeg, in Manitoba, having authority to issue and receive the same. And I further certify that such document so signed by a Police Magistrate having jurisdiction in the place where the same were taken and authenticated by a Minister of State and sealed with his official seal would be received in evidence for similar purposes by the tribunals of the said Province of Manitoba and Dominion of Canada.

In Witness Whereof I have this 12th day of October, 1915, set my hand and affixed my seal of office at the City of Winnipeg afore-

[SEAL.]

J. W. ARMSTRONG,

Provincial Secretary.

CANADA,

Province of Manitoba, City of Winnipeg. To wit:

In the Matter of the Application for the Extradition of THOMAS KELLY from the United States of America to Great Britain on the Charge of Obtaining by False Pretences Money.

I, the undersigned police magistrate in and for the Province of Manitoba, and of the city of Winnipeg, hereby certify that the written and printed matter contained in the annexed 5 to 64 pages, inclusive, is a true copy of the original affidavits of James Perkins, Joseph L. Donovan, Florence M. Kelly, stenographers; of the Information of

Edward J. Elliott, laid and sworn before me on the 28th day of August, A. D. 1915, and the depositions of Geoffrey H. Walker, John Allen, William Salt, J. Bender Priestman, Paul Schoiler, Stephen Clifford Oxtan, Peter Gordon McTavish, Victor William Horwood, Norman Woodruff Warren, Frederick Fearnley, J. H. G. Russell, Leopold Villeroy, H. B. Lyall and William John Ptolemy in support thereof, taken under oath before me on the 11th and 12th days of October, A. D. 1915, and of the exhibits therein referred to respectively, and of the warrant issued by me for the apprehension of the said Thomas Kelly.

Given under my hand and seal at my office aforesaid this 12th day of October, A. D. 1915.

HUGH J. MacDONALD,
*Police Magistrate in and for the Province
of Manitoba and of the City of Winnipeg.*

(Criminal Code, Sections 563 and 843.)

(Cut.)

Warrant to Apprehend a Person Charged with an Offense.

CANADA,

Province of Manitoba, Eastern Judicial District.

To all or any of the Constables or other Peace Officers in the Province of Manitoba:

Whereas, Thomas Kelly of the City of Winnipeg in Manitoba, Contractor hath this day been charged upon oath before the undersigned, one of His Majesty's Justices of the Peace or Police Magistrates in and for the said Province of Manitoba, for that he, between the 16th day of July A. D. 1913 and the 1st day of January A. D. 1915 at Winnipeg aforesaid did* unlawfully with intent to defraud, obtain by false pretences from His Majesty the King in the Right of the Province of Manitoba, the sum of about One Million two hundred and fifty thousand Dollars, for himself and others doing business under the name of Thomas Kelly and Sons.

These are therefore to command you, in his Majesty's name, forthwith to apprehend the said Thomas Kelly and to bring him before me or some other of His Majesty's Justices of Peace, or Police Magistrates, in and for the said Province of Manitoba to answer unto the said charge and to be further dealt with according to law.

Given under my hand and seal this 28th day of August, A. D. 1915, at Winnipeg in the Province of Manitoba aforesaid.

[SEAL.]

HUGH J. MacDONALD, P. M.

(*State shortly the offence.)

Information or Complaint on Oath.

CANADA,

Province of Manitoba, Eastern Judicial District:

The Information of Edward J. Elliott, of the City of Winnipeg,
Chief of Provincial Police.

In the Province of Manitoba, taken upon oath before me, the undersigned, one of His Majesty's Justices of the Peace or Police Magistrates in and for the said Province of Manitoba, at the City of Winnipeg aforesaid this 28th day of August in the year of our Lord one thousand nine hundred and fifteen,

Who saith that he has reason to believe and does believe that Thomas Kelly of Winnipeg aforesaid, Contractor between the 16th day of July, A. D. 1913, and the 1st day of January, A. D. 1915, at Winnipeg aforesaid did unlawfully with intent to defraud, obtain by false pretences from His Majesty the King in the Right of the Province of Manitoba, the sum of about One Million two hundred and fifty thousand dollars, for himself and others doing business under the name of Thomas Kelly and Sons contrary to the form of the Statute made and provided.

E. J. ELLIOTT.

Taken and sworn before me the day and year and at the place first above mentioned.

HUGH J. McDONALD, *J. P., P. M.*

CANADA,

Province of Manitoba, City of Winnipeg, To wit:

In the Matter of an Application for the Extradition of THOMAS KELLY from the United States of America to Canada on the Charge of Obtaining Money by False Pretences, Alleged to Have Been Committed in the City of Winnipeg, in the Province of Manitoba.

I, Florence M. Kelly, of the City of Winnipeg, in the Province of Manitoba, Official Court Stenographer, having been sworn to take evidence in this matter as prescribed by Section 683 of the Criminal Code of the Dominion of Canada make oath and say:

That the following is a true and correct transcript of the depositions of Frederick Fearnley and Norman Woodruff Warren taken before Sir Hugh John Macdonald a Police Magistrate in and for the Province of Manitoba and of the City of Winnipeg on the 12th day of October, A. D. 1915.

(Sgd.)

"FLORENCE KELLY."

Sworn before me at the City of Winnipeg in the Province of Manitoba this 12th day of October, A. D. 1915.

(Sgd.)

"H. J. SYMINGTON,"

A Commissioner in B. R.

CANADA,

Province of Manitoba, City of Winnipeg:

In the Matter of the Application for the Extradition of THOMAS KELLY from the United States of America to Great Britain on the Charge of Obtaining Money under False Pretences,

I, James Perkins, of the City of Winnipeg, Province of Manitoba, Official Court Reporter, having been sworn to take J. P. evidence in this matter as prescribed by section 683 of the Criminal Code of Canada, make oath and say that the following is a true and correct transcript of the depositions of William John Ptolemy, H. B. Lyall, Leopold Villeroy, and J. H. G. Russell, taken before Sir Hugh MacDonald, Police Magistrate in and for the Province of Manitoba, on the 11th and 12th days of October, A. D. 1915.

(Sgd.)

JAMES PERKINS."

Sworn before me in the City of Winnipeg, in the Province of Manitoba, this 12th day of October, 1915.

(Sgd.)

"H. J. SYMINGTON."

A Commissioner in B. R.

CANADA,

Province of Manitoba, City of Winnipeg, To wit:

In the Matter of the Application for the Extradition of THOMAS KELLY from the United States of America to Great Britain on the Charge of Obtaining by False Pretences,

I, Joseph Lawrence Donovan, of the city of Winnipeg, in the province of Manitoba, Court Reporter, having been sworn to take the evidence in this matter as prescribed by Section 683 of the Criminal Code of Canada, make oath and say that the following is a true and correct transcript of the depositions of,
 112 Victor William Horwood,
 Peter Gordon McTavish,
 Stephen Clifford Oxtan,
 Paul Schioler,
 J. Bender Priestman,
 William Salt,
 John Allen, and
 Geoffrey H. Walker,

taken before Sir Hugh John Macdonald, Police Magistrate in and for the Province of Manitoba, on the 11th and 12th days of October, A. D. 1915.

(Sgd.)

"J. L. DONOVAN."

Sworn before me at the City of Winnipeg in the Province of Manitoba, this 12th day of October, in the year of our Lord 1915.

(Sgd.)

H. J. SYMINGTON,

A Commissioner in B. R.

Deposition of Leopold Villeroy.

LEOPOLD VILLEROY, having been duly sworn, deposes as follows:

I have been an inspector in the employ of the Provincial Government of the Province of Manitoba from September, 1913, until after the resignation of Sir Rodmond Roblin's cabinet on May 12, 1915. It was my duty to check the concrete which went into the caissons put down to support the foundations of the new parliament buildings, and I was on the parliament buildings grounds continuously during all that time, and all the caissons with the exception of perhaps three were constructed during the time I was there. I assisted William Salt to measure the depths of caissons in the case of sixty caissons located in various parts of the building area, and covering practically every part. The measurements which I assisted in making ran all the way from 41 feet 9 inches to 45 feet 6 inches. I had continual difficulty in keeping the employes of Thomas Kelly & Sons to the quantities specified in the specifications. The said caissons were constructed almost entirely of gravel and cement. The employes of the said firm were continually putting too much gravel proportionately to 112½ the cement. The proportion of cement to gravel generally ran 1 to 8 or sometimes 1 to 9.

Lawrence Kelly was there nearly every day. Thomas Kelly was often there. Thomas Kelly told the men to heap up the wheelbarrows with gravel, thereby making the proportion of gravel to cement larger. Charlie Kelly and William Salt figured up the concrete, and Kelly's man checked up the materials supplied.

In excavating for the caissons the earth was held up by lumber placed around the outside of the excavation and held against the earth by iron rings. When they began to fill in the excavation, the lumber and the rings were taken out and this lumber and these rings were used over and over again in the caissons. There was not more than 100,000 feet of lumber used in connection with the whole 369 caissons under the Parliament Building. This lumber was cull lumber worth about \$20.00 a thousand feet. There was not more than 40 tons of iron rings used in connection with the construction of the whole of said caissons.

Now shown to me marked Exhibit 1, is a photograph which is a very good likeness of the said Thomas Kelly. I recognize the said photograph as that of the Thomas Kelly herein referred to.

WILLIAM JOHN PTOLEMY, having been duly sworn, upon his oath saith:

I have been Deputy Provincial Treasurer for the Province of Manitoba for many years. In order to obtain money from His Majesty, the King, it is necessary that there should be a proper voucher coming from the department authorizing the expenditure and properly certified by the officers of that department having charge of the expenditure then passing through the hands of the Auditor of our department for payment. In the case of payments in respect of the Parliament Buildings, a proper voucher would be presented to the Auditor for the Province accompanied, by, among other things, the

certificate of the Architect, and without this document payments will not be made. The Auditor is Frederick Fearnley. This practice was followed in every instance of payments being made to Thomas Kelly & Sons in connection with the New Parliament Buildings. All cheques are signed by the Provincial Treasurer or by myself and are countersigned by the Provincial Auditor beforehand.

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Deposition of Geoffrey H. Walker.

GEOFFREY H. WALKER, having been first duly sworn, deposeth as follows:

I am the Prothonotary of the court of King's Bench for the province of Manitoba, and have been such for over thirty years. I was also Registrar of the Royal Commission appointed to investigate the construction of the parliament building in the City of Winnipeg, and payments made in respect thereof and all matters relating thereto. Mr. F. H. Phippen, K. C., appeared there with Thomas Kelly, for Thomas Kelly & Sons, and acted as counsel on behalf of said firm before said Royal Commission. On the 29th day of April, 1915, the said F. H. Phippen produced 45 invoices of the cement used by said Thomas Kelly & Sons in the construction of said Parliament buildings, and said they covered the cement used in the said building.

J. BENDER PRIESTMAN being duly sworn, on oath saith:

I am Accountant of the Imperial Bank of Canada, in the City of Winnipeg, in the province of Manitoba, in the Dominion of Canada. The firm of Thomas Kelly & Sons are customers of said Bank. Said firm consisted until about April 29th last of Thomas Kelly, Lawrence C. Kelly, Charles B. Kelly, and Robert Emmett Kelly, now deceased, and since then has, I believe, consisted of all but the latter. The said firm of Thomas Kelly & Sons kept accounts called Tender account, Savings account, and a Current account in the said Bank.

The Tender account shows that on July 2, 1913, a cheque of Thomas Kelly & Sons for \$160,000.00 was accepted by the Bank and charged to this account, and that on July 3 the said account was credited with the said amount, and a new cheque drawn by Thomas Kelly & Sons on their tender account for \$142,987.50 was accepted by the Bank and charged against this account, the said cheque now shewn to me being as follows:

"Thomas Kelly & Sons, Contractors.

No. 2913.

WINNIPEG, July 3, 1913.

"Pay to the Honorable G. R. Coldwell, Acting Minister of Public Works, One hundred and forty two thousand, nine hundred and eighty seven dollars and fifty cents, deposit with tender, parliament buildings.

113½ "To the Imperial Bank of Canada."

(Sgd.)

THOMAS KELLY & SONS,
Per THOMAS KELLY."

The said Thomas Kelly had the right to sign and indorse cheques on behalf of the said firm of Thomas Kelly & Sons and each of the members of said firm, and also J. S. Ferris had the right to indorse cheques on behalf of said firm for deposit to the credit of said firm in my bank.

Now shewn to me are 19 cheques marked Exhibits 1 to 19 drawn by the Treasury and Audit departments, payable to the said firm of Thomas Kelly & Sons, each and all duly indorsed by and paid to the said Thomas Kelly & Sons by my bank.

The photograph now shewn to me and marked Exhibit 20 is a very good likeness of the said Thomas Kelly. I recognize the photograph as that of the said Thomas Kelly herein referred to.

Deposition of Norman Woodruff Warren.

NORMAN WOODRUFF WARREN having been first duly sworn, deposeth as follows:

I am acting manager of The Dominion Bridge Company Limited in the City of Winnipeg, in the Province of Manitoba, Canada.

The Dominion Bridge Company Limited entered into a contract with Thomas Kelly & Sons to supply, paint and load on their wagons at our works, the structural steel grillage required for the south wing and central portion of the new Parliament Buildings in the City of Winnipeg for the sum of \$50 per ton.

Under the said contract the said Dominion Bridge Company Limited supplied, painted and loaded on the wagons of Thomas Kelly and Sons at our works 656 tons, 168 pounds, the price of which under the contract was \$32,842, which sum the said Thomas Kelly and Sons have paid to the said Dominion Bridge Company Limited.

The said steel was delivered to said Thomas Kelly and Sons between the 11th of June, 1914, and the 28th of July, 1914.

114 STEPHEN CLIFFORD OXTON, being duly sworn, upon his oath saith:

I am Special Assistant to the present Minister of Public Works of the government of province of Manitoba, in the Dominion of Canada. During the months of April and May, 1915, a Royal Commission appointed by the date Manitoba Government to investigate all matters relating to the construction of the new parliament buildings at Winnipeg aforesaid was holding sittings in the court house at the said City of Winnipeg, and Mr. F. H. Phippen acted as counsel for the firm of Thomas Kelly & Sons, contractors, for the erection of the said new parliament buildings. I was present in Court on one occasion during the sittings of the said Royal Commission when the said Phippen on behalf of the said firm of Thomas Kelly & Sons produced invoices for cement from the Canada Cement Company and the Lake Winnipeg Shipping Company to Thomas Kelly & Sons, which he said were all the invoices for all cement used in the caissons of the new parliament buildings. I tabulated all of the said invoices on the afternoon of their production before the said Commission. My tabulation showed that a total of 23,834 barrels of cement were

received by Thomas Kelly & Sons on the said work prior to the 1st day of March, 1914, by which date the said caissons had been completed.

On the basis of one and one-half barrels of cement to each yard of concrete, which Mr. Kelly in his evidence before the Public Accounts Committee of the Manitoba legislature in March, 1915, stated in my presence under oath was the proportion that was used in the caisson construction, there would be 15,890 cubic yards of concrete in the caissons. The total invoices for cement produced contained invoices of 7,732 barrels delivered at the work between May 7th, 1914, and August 3, 1914, which was the last date up to which invoices for cement were produced.

The photograph now shewn to me and marked Exhibit 1 is a very good likeness of the said Thomas Kelly. I recognize the photograph as that of the said Thomas Kelly herein referred to.

114½ J. H. G. RUSSELL, being duly sworn, upon his oath saith:

I am an architect carrying on business in the City of Winnipeg, in the Province of Manitoba, Canada, and have been so carrying on business for many years. I had excavations made alongside fifteen caissons covering the whole area under the New Parliament Buildings in the said City of Winnipeg from the top of the caissons to rock and found that with the exception of two caissons which had been previously pointed out to me by V. W. Horwood, late Provincial Architect, to have been exceptional, the depth to rock under the building area of the New Parliament Building varied from one foot four and a half inches for the area under the south wing and centre portion, and seven and a half inches for the area under the north wing. Based upon the investigation which I have conducted I calculated the total cubic yards of material in the caissons under the New Parliament Buildings at 21,327 cubic yards, making a liberal allowance to the contractors for everything. I examined said caissons and took samples of the material therein. The concrete was not reinforced with the exception of the bell in caisson No. 6. The crushing strength of such samples as could be tested ranged from 466 lbs. to 4258 lbs. per square inch, showing the concrete to run from very poor to very good. The other samples taken could not be tested, as they ranged from gravel to the poorest sample tested. There was no uniformity in the quantities of the different materials used and some of the material now in the caissons cannot be designated as concrete at all, it consists merely of gravel. By the specifications of the contract of July 16th, 1913, one part of Portland Cement, two parts of sand and four parts of crushed stone were called for, but this has not been adhered to. No crushed stone was found in any of the samples taken from the caissons. In none of the caissons were any lumber or iron rings found, except in the bottom of one and the top of another one. I have also made a valuation of the work done and materials on the site of the said Parliament Buildings and find the total value of the work executed up to the 12th day of May, 1915, is \$777,593.73, aside from the sewer contract, the price of which was \$7040, and the value of which sewer I find is \$2,598.60. The value

of the material on the ground and not used I find to be \$144,704.68. I find the value of the caissons to be, at an outside valuation \$228,198.90, allowing a reasonable profit to the contractor.

115 WILLIAM SALT being duly sworn, upon his oath saith:

I have been a registered architect in the province of Manitoba, in the Dominion of Canada, since 1914, and prior to that time was for about four years working in architect's offices and with building contractors in the City of Winnipeg. I commenced work under Victor W. Horwood, provincial architect, in connection with the new parliament buildings being erected by the Manitoba government at the City of Winnipeg aforesaid, during the first week of September, 1913, and was working continuously either in his office or on the building itself until March 12, 1915. About the first week of September, 1913, I commenced work as assistant inspector under the chief inspector W. A. Elliott and Provincial Architect Horwood on the construction of the caissons for the said parliament buildings, the work on said caissons being commenced about a week before. There never were more than thirty caissons under construction at any one time. As the holes were filled with concrete, the lumber and iron rings used in each were, as a rule, taken out and used again in the other caissons. Lumber was not required for more than sixty caissons, and there was only one caisson in which it was found necessary to leave all the lumber because of the condition of the ground. In a very few others it was found necessary to leave a small portion of the lumber for protective purposes. I am satisfied that there could not have been all told more than 100,000 feet of lumber, at the very outside figure, used in the construction of the caissons. I should estimate at a maximum calculation about twenty-two or twenty-three thousand cubic yards of concrete were filled in the caissons. Not more than 40 tons of iron rings were used, and not more than one ton of rings was left in the caissons.

The concrete filling in the caissons was plain concrete, not reinforced. A few steel cross pieces were put in about four or five caissons. There were 369 caissons altogether. I think \$8 per yard would be an ample allowance for the concrete fillings put in the said caissons. The reinforcement in the caissons which was omitted would be at least worth \$4 per yard. The said Thomas Kelly knew that the concrete filled in the said caissons was not reinforced, and that the lumber and rings used in the construction of the said caissons was used over and over again in different caissons, as stated above.

Thomas Kelly and his sons Lawrence C. Kelly and Charles B. Kelly, all members of the firm of Thomas Kelly & Sons, 115½ contractors for the erection of the said parliament buildings, were frequently on the ground looking over the work. I saw Charles B. Kelly mostly and I furnished him with the true depths of all the caissons. I helped to measure all the caissons. The deepest was 55 feet, and the depths varied for all of them below that to about 44 feet.

The photograph now shewn to me, and marked Exhibit 1, is a

very good likeness of the said Thomas Kelly. I recognize the photograph as that of the said Thomas Kelly herein referred to.

Deposition of H. B. Lyall.

H. B. LYALL having been duly sworn, deposeth as follows:

I am secretary-treasurer and assistant manager of the Manitoba Bridge & Iron Works Limited, which company had two contracts with Thomas Kelly & Sons for the supplying of steel for use in the erection of the new parliament buildings in the City of Winnipeg in the Province of Manitoba, Canada. One of them is a formal contract dated 16th day of April, 1914, now produced and shewn to me, whereby the Manitoba Bridge & Iron Works agreed to supply Thomas Kelly & Sons all the steel for the north wing of the new parliament buildings for the price of \$67,000. We supplied to said firm 1,198 tons 1,605 pounds of steel, being all the steel called for under the contract between His Majesty King George the Fifth, represented by the Minister of Public Works and Thomas Kelly & Sons bearing date 26th day of March, A. D. 1914, which is now shewn to me. We also supplied the steel above the grillage for the south wing and central portion of the said parliament buildings, exclusive of the dome, under a contract made between myself on behalf of the Manitoba Bridge & Iron Works and Thomas Kelly & Sons, the terms of which are set out in a letter dated July 24th, 1914, from the Manitoba Bridge & Iron Works to Thomas Kelly & Sons, a carbon copy of which from the files of my company is now shewn to me. Under the terms of said contract my company supplied all the steel except the grillage covered by the contracts between His Majesty King George the Fifth, represented by the Honorable Minister of Public Works for the Province of Manitoba, and Thomas Kelly & Sons dated June 20th, 1914, and December 23, 1914. Under said contract
116 we supplied by May 20th, 1915, 1,227 tons of steel, and had then on hand 113 tons of steel of which Thomas Kelly & Sons have not yet taken delivery.

We also did the painting on the steel in the front of above contracts at an additional charge of \$1.50 per ton. Thomas Kelly & Sons took delivery of all of the above material at our works. I have had a large experience in delivering and erecting steel. We estimated the reasonable cost of delivering said steel from our works to said parliament buildings at 60c. per ton, and we would have been prepared to take the contract at that price. We delivered to Thomas Kelly & Sons under the first contract, in April and May, 1914, 386 tons, June 290 tons, July 70 tons, August 322 tons, November 717 tons, April 1915, 34 tons approximately. This steel we were prepared to supply and erect at \$70 a ton.

In respect of the first contract my company received previous to August 19, 1914, the sum of \$29,578.92 from Thomas Kelly & Sons. The fair and average profit of a constructing firm like Thomas Kelly & Sons in respect of the supplying and erecting of such steel is ten per cent, which would make approximately \$92,312, a fair price to the

contractor for supplying and erecting the steel in the said north wing. Under the second contract the price of steel was \$53.80 a ton including painting. Sixty cents a ton would cover the cost of delivery from our plant to the parliament buildings. Under that contract we delivered 385 tons in October and November, 1914, 176 tons in December and up to May 20th, 1915, 666 tons, and we then had 113 tons still to deliver, making a total of 1,340 tons under said contract. We would have undertaken to erect this steel for from \$13 to \$15 per ton, which would have been a reasonable and liberal figure to allow. A fair price for supplying and erecting this steel would be between \$67.40 and \$69.40 a ton, allowing a fair profit as above.

The said firm of Thomas Kelly & Sons have now paid my company in full for the whole of the above steel, excepting 30 tons still unfabricated and non-delivered on the second contract.

116½

Deposition of Frederick Fearnley.

FREDERICK FEARNLEY, having been first duly sworn, deposeeth as follows:

I have been assistant and acting auditor for the Province of Manitoba for several years. In order to obtain money from His Majesty the King it is necessary that a proper voucher be presented to the auditor, and in the case of payments in respect to the new parliament buildings that a proper voucher be presented to the auditor for the province accompanied among other things by the certificate of the architect, and without these documents payment will not be made.

In respect to each of the payments made to Thomas Kelly and Sons the voucher was accompanied by the certificate of the architect certifying that Thomas Kelly and Sons were entitled to the amount of money set out in such certificate and cheques payable to Thomas Kelly and Sons were thereupon issued for the amount set out in each certificate, which cheques had to be signed by the provincial treasurer, or his deputy, and by the auditor or acting auditor of the province.

Now shown to me, marked Exhibits 1 to 19 are cheques issued to Thomas Kelly and Sons in pursuance of such vouchers and certificates and all of the said cheques have been paid to the said Thomas Kelly and Sons out of the moneys belonging to His Majesty the King.

PETER GORDON McTAVISH being duly sworn, upon oath saith:

I am Accountant in the Provincial Architect's office in the City of Winnipeg, in the Province of Manitoba, in the Dominion of Canada, and have occupied that position for several years. I was in charge of the applications for payment made by Thomas Kelly & Sons for work done in respect of the new parliament buildings in the said City of Winnipeg. Some of the applications were handed to me by V. W. Horwood, the Provincial Architect. The

other applications were handed to me by Lawrence C. Kelly, one of the members of the firm of Thomas Kelly & Sons. These applications were generally accompanied by a letter from the said firm asking for payment for the amount specified in the estimate or application on account of materials supplied and work done in respect of the said new parliament buildings, and asking that the estimate be put through promptly. Most of these were signed by Lawrence C. Kelly on behalf of the firm. Believing in and acting upon the correctness of these applications I made out certificates for signature by the provincial architect certifying that the said firm of Thomas Kelly & Sons were entitled to be paid in respect of said estimates, the amounts set out in said certificates. I did not make out and I would not have made out certificates for signature by the Provincial Architect, until I received from the said firm of Thomas Kelly & Sons applications for payment; and said firm would not have received payments, had they not sent in such applications.

I was in charge of the files containing letters received by the said Provincial Architect's office and I have made a search in the said files and find that a great many letters and other documents are missing therefrom including all of the letters from Thomas Kelly & Sons, enclosing applications for payment, sometimes called "progress estimates," now shewn to me and marked Exhibits 1 to 20 inclusive.

Now shewn to me marked Exhibit 21 is a cut of Thomas Kelly the senior member of said firm of Thomas Kelly & Sons, and I say that the same is a good likeness of the said Thomas Kelly.

VICTOR WILLIAM HORWOOD being duly sworn, upon his oath saith:

I am an architect by profession and have practiced as such at the City of Winnipeg, in the Province of Manitoba, in the Dominion of Canada, since 1904. From January, 1911, I acted as assistant Architect of the Government of the said Province of Manitoba, and in October or November, 1911, I was appointed Provincial Architect by the Manitoba Government, occupying that position until May, 1915. During the year 1912 the Manitoba Government decided to erect new parliament buildings at the City of Winnipeg aforesaid, and tenders were called for by advertisement on May 26, 1913. Prior to that date it had been decided by the Honorable Geo. R. Coldwell, Acting Minister of Public Works in the Manitoba Government to make changes in the original specifications, such changes being from a piling foundation to caissons, and from reinforced concrete to steel construction. Tenders were called for, however, on the original specifications, and two tenders were handed to me early in July, 1913, by the said Coldwell. One by Peter Lyall & Son for \$2,863,900 and the other by Thomas Kelly & Sons for \$2,859,750. The latter tender being the lowest was recommended by me for acceptance, and a contract made between His Majesty the King and Thomas Kelly & Sons, dated 16th July, 1913, for the erection of the said new parliament buildings for the sum of \$2,859,750. The

tender of Thomas Kelly & Sons contained an item of \$64,050 for the piling foundation called for in the original specifications. This sum I have since found would have been quite inadequate to cover the cost of the said piling foundation. The caisson work was commenced in August, 1913. There was no written contract for the construction of the caissons, but after the work had commenced it was agreed between Thomas Kelly, senior partner of the firm of Thomas Kelly & Sons, and myself, that payments for the caissons should be made as follows: \$12 per yard for the filling of the caissons with reinforced concrete; \$7 per yard for the excavation; \$40 per thousand feet for the lumber used, and 7 cents per pound for the iron rings and bolts.

Applications for payment for the said caisson work were made by the said Thomas Kelly & Sons for the payments to be made by his Majesty the King in respect of labor and materials alleged to have been done and supplied, all of which applications were delivered to my office at the City of Winnipeg aforesaid, some of them being personally handed to me and the remainder, as I believe, delivered to Mr. P. G. McTavish, an accountant in my office. The said McTavish made out certificates based upon the said applications, and I signed these certificates, now shewn to me and marked Exhibits 1 to 6, on the basis of the applications for payment made by said Thomas Kelly & Sons. On the representations contained in said applications that labor and materials had been supplied, as follows: Reinforced concrete 35,993 yards, excavation 35,993 yards, timbering 1,213,000 feet, iron rings and bolts 797.5 tons. I completed the certificates hereinbefore referred to for the Minister of Public Works, and on my certificates orders-in-council were passed upon which there was paid to the said Thomas Kelly & Sons the sum of \$844,037, less the amount included in the tender of the said firm for piling, viz.: the sum of \$64,050, leaving a balance of \$779,987 actually paid out to the said firm on the strength of the said representations between November 17, 1913 and June, 1914.

The said firm of Thomas Kelly & Sons was, I believe, composed of Thomas Kelly and his sons Lawrence C. Kelly, Robert Emmett

118 Kelly, now deceased, and Charles B. Kelly, all of whom were active partners and fully conversant with all matters relating to the construction of the parliament buildings. Thomas Kelly was the senior partner of the said firm and the active business manager and supervisor of its undertakings. The said Thomas Kelly knew that concrete, lumber, and iron rings and bolts to the amount represented in said applications had not been supplied nor the excavation as alleged made, and that the sum above mentioned \$844,037 included large unearned and improper sums paid to the said firm, and he knew that the applications for payment were based on false and fraudulent representations.

One William Salt was one of the inspectors employed by the Manitoba government upon the said work, and he kept a book recording the actual depths of the said caissons. When the Public Accounts Committee of the Manitoba Legislature began to investigate the payments made to the said firm of Thomas Kelly & Sons

on the said buildings it was found that the true depths of the caissons could not be made to justify the payments that had been made to the said firm. These figures were partially altered by the said Salt, for whom a holiday was arranged during the session of the said Public Accounts Committee, and later during the sittings of the said Committee, in March, 1915, I had several conversations with the said Thomas Kelly in connection with these caisson payments in which the question of justifying the overpayments to Kelly's firm was discussed. On one occasion at Thomas Kelly's house there were present the said Thomas Kelly, W. A. Elliott, chief inspector, and myself, and it was agreed that the arrangement made the same day between Coldwell, Elliott and myself should be carried out, viz.: that Elliott should go for Salt, to endeavor to induce him to come back and give evidence on oath before the said Public Accounts Committee, upholding the figures as altered. The said Thomas Kelly was very anxious that Salt should do this.

The said firm of Thomas Kelly & Sons also had contracts in respect of the steel work for the north wing and the steelwork for the south wing of said parliament buildings, bearing date March 26, 1914 and June 20, 1914 respectively, and applications for payment for work done and materials supplied in connection with the said contracts were made by the said firm, and on the basis of the said applications certificates were signed by me for the amount of work and material claimed for by said applications. Which work had not been done, and which material had not been erected as represented.

118½ Now shewn to me and marked Exhibit 7 are a series of twenty applications for payment made by the said firm of Thomas Kelly & Sons in connection with the work done on the said parliament buildings, including the six applications for payment made on the caisson work, and the various applications made in respect of the said steel contracts. The said steel contracts were in addition to the original contract and no deductions were made from same for any work included in respect of same in the original contract.

The photograph now shewn to me, and marked Exhibit 8, is a very good likeness of the said Thomas Kelly. I recognize the photograph as that of the said Thomas Kelly herein referred to.

PAUL SCHIOLER being duly sworn, upon his oath saith:

I am a civil engineer. I have had experience in structural steel and reinforced concrete work. I was Assistant Engineer with the city of Winnipeg for some years and had charge of the structural steel and reinforced concrete work. I have examined the contracts bearing date July 16, 1913, March 26, June 20th, and December 23, 1914 between his Majesty King George the Fifth and Thomas Kelly & Sons, and the specifications and plans therein referred to of the new parliament buildings in the city of Winnipeg, Province of Manitoba, Canada. I find that the value of the original foundation consisting of piling and caissons under the dome as required by the original contract dated July 16, 1913, and as shewn on the original plans is \$196,154.32; that the value of a conservatively

but properly designed caisson foundation is \$149,730; that the value of the reinforced concrete floors, beams and columns under the said original contract is \$217,195; that the value of the substituted floors, beams and columns, inclusive of structural steel necessary for changes from reinforced concrete framing to structural steel framing is \$249,127; that the caisson plans for the new parliament buildings prepared in the office of the provincial architect shows more than twice the bearing surface area required by conservative design to carry this building; that the grillage plan prepared in the office of the Provincial Architect shows about 1,000 tons of grillage, and that there is practically no grillage required for this building; that the steel plans prepared in the office of the provincial architect show about 350 tons of waste steel, as columns and beams, 119 built in heavy brick walls; that the change from piles to caissons should have been made at a saving to the Province of \$46,424.32, and that the change from reinforced concrete floors, columns and beams to structural steel framing should not have been made, but if made, the cost of the change for the whole of the building exclusive of the dome, should not have exceeded \$31,932. In making both changes there should have been a deduction of \$14,492.32 in the amount payable by his Majesty the King to the said contractors Thomas Kelly & Sons under the original contract for the construction of said parliament buildings, dated July 16, 1913. The subsequent contracts for \$230,100 for the north wing, for \$215,000 and for \$52,000 for the south wing and central portion exclusive of the dome, and the payments for the caissons and said work under said contracts just mentioned should never have been made, but, instead, as I have already stated, the said Thomas Kelly & Sons should have paid to his Majesty the King \$14,492.32, or have deducted this sum from the original contract price. The said subsequent contracts provide for steel framing throughout, with all columns and beams encased in concrete. A large quantity of cement is required for this construction.

JOHN ALLEN duly sworn, saith as follows:

I am a practicing Barrister and Attorney for the Province of Manitoba, in the City of Winnipeg, in the Dominion of Canada. I am Deputy Attorney-General for the Province of Manitoba. I am familiar with the Criminal Law of Canada which is found in the Criminal Code, Chapter 146 of the Revised Statutes of Canada, 1906, and amending Acts. The Criminal Law is the same for all Canada, being enacted by the Parliament of Canada at Ottawa. By the Criminal Code of Canada, section 405, every one is guilty of an indictment offense and liable to three years' imprisonment who, with intent to defraud, by any false pretence, either directly or through the medium of any contract obtained by such false pretence, obtains anything capable of being stolen, or procures anything capable of being stolen to be delivered to any other person than himself.

I have perused the depositions attached hereto, and, in my opin-

119½ ion, the evidence disclosed by the said depositions shews the crime of obtaining by false pretences, aforesaid, under the laws of Canada.

Ex. 21. Deposition P. G. McTavish. Oct. 12/15.

Ex. 1. S. C. Oxton's deposition. Oct. 12/1915.

Ex. 20. Deposition J. B. Priestman. Oct. 12/15.

Exhibit 1. Deposition of Wm. Salt. Oct. 11th, 1915.

Exhibit 1. Deposition of L. Villeroy. Oct. 11th, 1915.

Exhibit 8. Deposition of V. W. Horwood. Oct. 11/1915.

(Cut of Thomas Kelly.)

HUGH J. MacDONALD, P. M.

Office of the Provincial Architect.

WINNIPEG, April 22nd, 1914.

No. 2010.

Progress

Estimate No. 5.

\$156,516.45.

Building New Parliament Buildings at Winnipeg.

To the Hon. The Minister of Public Works:

I hereby certify that Thos. Kelly & Sons of Winnipeg are entitled to a payment of One hundred and fifty-six thousand five hundred and sixteen 45/x Dollars (\$156,516.45).

(Sgd.)

V. W. HORWOOD,

Provincial Architect.

Exhibit 1.

Deposition of V. W. Horwood.

Oct. 11/1915.

Hugh J. MacDonald, P. M.

120

Office of the Provincial Architect.

WINNIPEG, April 15th, 1914.

No. 2009.

Progress

Estimate No. 4.

\$165,886.00.

Building New Parliament Bdgs. at Winnipeg.

To the Hon. The Minister of Public Works:

I hereby certify that Messrs. Thos. Kelly & Sons of Winnipeg

are entitled to a payment of One Hundred and sixty-five thousand eight hundred and eighty-six 00/100 Dollars (\$165,886.00).
(Sgd.)

V. W. HORWOOD,
Provincial Architect.

Exhibit 2.
Deposition of V. W. Horwood.
Oct. 11/1915.
O. K. W. H. M.
Hugh J. Macdonald, P. M.

Office of the Provincial Architect.

WINNIPEG, June 16th, 1914.

No. 2013.

Progress
Estimate No. 6.
\$62,555.55.
Building New Parliament Buildings at Winnipeg.

To the Hon. The Minister of Public Works:

I hereby certify that Mess. Thos. Kelly & Sons of Winnipeg are entitled to a payment of Sixty-two thousand five hundred and fifty-five 55/100 Dollars (\$62,555.55).

(Sgd.)

V. W. HORWOOD,
Provincial Architect.

Exhibit 3.
Deposition of V. W. Horwood.
Oct. 11/1915.
Hugh J. Macdonald, P. M.

Office of the Provincial Architect.

WINNIPEG, March 4th, 1914.

No. 2008.

Progress
Estimate No. 3.
\$127,307.05.
Building Parliament Buildings at Winnipeg.

To the Hon. The Minister of Public Works:

I hereby certify that Mess. Thos. Kelly & Sons, of Winnipeg are entitled to a payment of One hundred and twenty-seven thousand three hundred and seven 05/100 Dollars (\$127,307.05).

(Sgd.)

V. W. HORWOOD,
Provincial Architect.

Exhibit 4.
Deposition of V. W. Horwood.
Oct. 11/1915.
O. K. W. H. M.
Hugh J. Macdonald, P. M.

Office of the Provincial Architect.

WINNIPEG, Nov. 19th, 1913.

No. 2002.

Progress

Estimate No. 1.

\$145,847.25.

Building Parliament Buildings at Winnipeg.

To the Hon. The Minister of Public Works:

I hereby certify that Mess. Thos. Kelly & Sons of Winnipeg are entitled to a payment of One hundred and forty-five thousand Eight hundred and forty-seven 25/100 Dollars (\$145,847.25).

Concrete Caisson Foundations.

(Sgd.)

V. W. HORWOOD,
Provincial Architect.

Exhibit 5.

Deposition of V. W. Horwood.

Oct. 11/1915.

Hugh J. Macdonald, P. M.

121 Office of the Provincial Architect.

WINNIPEG, Dec. 16th, 1913.

No. 2004.

Progress

Estimate No. 2.

\$121,874.70.

Building New Parliament Bdgs. at Winnipeg.

To the Hon. The Minister of Public Works:

I hereby certify that Mess. Thos. Kelly & Sons of Winnipeg are entitled to a payment of One hundred & twenty-one thousand Eight hundred & Seventy-four 70/100 Dollars (\$121,874.70).

(Sgd.)

V. W. HORWOOD,
Provincial Architect.

Ex. 6.

Deposition of V. W. Horwood.

Oct. 11/1915.

Hugh J. Macdonald, P. M.

1914-15.

WINNIPEG, December 8, 1914.

No. 672.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$76,875.00 Seventy six thousand eight hundred and seventy five and no/100 Dollars.
To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 1.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

WINNIPEG, Nov. 29, 1913.

No. 34897.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$145,847.25 One hundred and forty-five thousand, eight hundred and forty seven 25/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 2.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, October 29, 1914.

No. 44066.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$51,850.00 Fifty one thousand, eight hundred and fifty no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provisional Treasurer.

F. H. HIAM,
Provincial Auditor.

Exhibit 3.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

122

WINNIPEG, June 23, 1914

No. 22735.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons.....\$62,555.55
Sixty two thousand five hundred and fifty five and.....55/100.
To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 4.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

WINNIPEG, January 9, 1914.

No. 4299.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons.....\$121,874.70
One hundred and twenty one thousand eight hundred and seventy
four70/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 5.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

WINNIPEG, April 24, 1914.

No. 16243.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons.....\$156,516.45
One hundred and fifty six thousand five hundred and sixteen
.....45/100.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 6.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

WINNIPEG, April 21, 1914.

No. 15813.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons.....\$165,886.00
 One hundred and sixty five thousand eight hundred and eighty
 six.....no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

HUGH ARMSTRONG,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 7.
 Deposition of J. B. Priestman.
 Deposition of F. Fearnley.
 Hugh J. Macdonald, P. M.

123

1913-14

WINNIPEG, June 13, 1914.

No. 21039.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons.....\$80,750.00
 Eighty thousand seven hundred and fifty and.....no/100
 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 8.
 Deposition of J. B. Priestman.
 Deposition of F. Fearnley.
 Hugh J. Macdonald, P. M.

WINNIPEG, October 9, 1913.

No. 30093.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons.....\$20,084.65
 Twenty thousand and eighty four.....65/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 9.
 Deposition of J. B. Priestman.
 Deposition of F. Fearnley.
 Hugh J. Macdonald, P. M.

WINNIPEG, August 30, 1913.

No. 25480.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons.....\$35,700.00
Thirty five thousand seven hundred and.....no/100 Dollars.
To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 10.
Deposition of J. B. Priestman.
Deposition of F. Fearnley.
Hugh J. Macdonald, P. M.

WINNIPEG, December 19, 1913.

No. 2380.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons.....\$7,040.00
Seven thousand and forty and.....no/100 Dollars.
To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 11.
Deposition of J. B. Priestman.
Deposition of F. Fearnley.
Hugh J. Macdonald, P. M.

124

1913-14.

WINNIPEG, March 26, 1914.

No. 13679.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons.....\$2,259.00
Twenty-two hundred and fifty nine and.....no/100 Dollars.
To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 12.
Deposition of J. B. Priestman.
Deposition of F. Fearnley.
Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, June 23, 1914.

No. 22756.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$131,750.00 One hundred and thirty one thousand seven hundred and fifty no/100

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 13.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, July 9, 1914.

No. 27439.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$157,250.00. One hundred and fifty seven thousand two hundred and fifty no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 14.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, June 4, 1914.

No. 19985.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$42,500.00. Forty-two thousand, five hundred no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

HUGH ARMSTRONG,
Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 15.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

125

1913-14.

WINNIPEG, July 9, 1914.

No. 27440.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$85,000.00. Eighty five thousand and no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,

Deputy Provincial Treasurer.

F. FEARNLEY,

Provincial Auditor.

Exhibit 16.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, March 9, 1914.

No. 12019.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$127,307.05. One hundred and twenty seven thousand three hundred and seven 05/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,

Deputy Provincial Treasurer.

F. FEARNLEY,

Provincial Auditor.

Exhibit 17.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, Sept. 24, 1914.

No. 42044.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$107,950.00. One hundred and seven thousand nine hundred and fifty 00/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 18.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, October 9, 1914.

No. 42861.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$85,246.50 Eighty-five thousand, two hundred and forty six 50/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 19.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

EXHIBIT I.
Deposition, P. G. McTavish, Oct. 12th, 1915. Hugh J. Macdonald, P. M.
APPLICATION FOR PAYMENT.

Progress Estimate No. 1.

New Parliament Building, at Winnipeg, Man.

To the Provincial Architect, Winnipeg. Sir:—We hereby make application for a payment of \$35,700.00, made up as per detailed statement below, for work done to this date applying against General Contract dated July 16, 1913. Certificate, 1,317, issued August 26, 1913.

August 22d, 1913.

Thos. Kelley & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$ 15,959.50	\$ 57,959.50	Excavators Work, Drains, Etc.	\$42,000.00		\$42,000.00
2		169,746.50	Concrete Footings & Foundations Walls, Etc.			
2		54,895.00	Stone Masons' Work			
3		229,040.00	Reinforced Concrete Work			
4		995,465.00	Cut Stone Work, Carving, Etc.			
5		336,452.00	Brickwork (Common Brick)			
5		35,634.00	Hollow Tile Partitions, Floors, Etc.			
6		277,612.40	Carpenter & Joiner Work			
6		20,000.00	Hardware			
7		41,500.00	Structural Steel Work			
7		189,784.00	Ornamental Iron & Metal Work			
-8		29,990.00	Tinsmiths' & Sheet Metal Work			
9		103,377.00	Plasterers' Work			
11		219,067.00	Marble & Tile Work			
12		42,000.00	Painting			
14		64,050.00	Concrete Piles			
15		2,177.00	Plumbing			
		\$2,859,750.00	Totals	\$42,000.00		\$42,000.00
			Less 15%	6,300.00		6,300.00
				\$35,700.00		\$35,700.00
			Amount of this Estimate	\$35,700.00		\$35,700.00

Certified Correct,
"W. A. Elliott," Inspector.

EXHIBIT 2.
Deposition P. G. McTavish, Oct. 12th, 1915. Hugh J. Macdonald, P. M.
APPLICATION FOR PAYMENT.

Progress Estimate No. 2. Building: New Parliament Building at Winnipeg, Man.
T, the Provincial Architect, Winnipeg. Sir:—We hereby make application for a payment of \$20,084.65 for work done to date as per this detailed statement. Date of Contract, July 16, 1913. Certificate No. 1,378, issued October 6, 1913.
Thos. Kelly & Sons, Contractors.

September 27th, 1913

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$ 10,959.50	\$ 57,959.50	Excavators Works, Drains, Etc.	\$47,000.00	\$42,000.00	\$ 5,000.00
2		169,746.50	Concrete Footings & Foundations Walls, Etc.			
3		54,895.00	Stone Masons' Work			
4		229,040.60	Reinforced Concrete Work			
5		995,465.00	Cut Stone Work, Carving, Etc.	18,629.00		18,629.00
6	317,823.00	336,452.00	Brickwork (Common Brick)			
7		35,634.00	Hollow Tile Partitions, Floors, Etc.			
8		277,612.40	Carpenter and Joiner Work			
9		20,000.00	Hardware			
10		41,500.00	Structural Steel Work			
11		180,784.00	Ornamental Iron & Metal Work			
12		28,990.00	Tinsmiths' & Sheet Metal Work			
13		103,377.00	Plasterers' Work			
14		219,067.00	Marble & Tile Work			
15		42,000.00	Painting			
		64,050.00	Concrete Piles			
		2,177.00	Plumbing			
			Totals	\$65,629.00	\$42,000.00	\$23,629.00
			Less 15%	9,844.35	6,300.00	3,544.35
				\$55,784.65	\$35,700.00	\$20,084.65
			Less Previous Payments			
			Amount of this Estimate	\$20,000.00		
						Certified Correct, "W. A. Elliott," Inspector.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.
 APPLICATION FOR PAYMENT.

Folio No. 3
 Winnipeg, May 19, 1914

Progress Estimate No. 3.

Building: Parliament, at Winnipeg, Man.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$42,500.00 for work done to date as per this detailed statement. Date of Contract, July 16, 1913. Certificate No. 2011, issued May 30, 1914.

Thos. Kelly & Sons, Contractors.

Value of
 Work Done
 to Date

PARTICULARS

No. Detailed
 Amount of
 Contract

Balance to
 Complete

Amount of
 Previous
 Payments

Amount asked
 per this
 Estimate

1	\$ 57,959.50	Excavators Work, Drains, Etc.	\$ 47,000.00	\$ 47,000.00	
2	169,746.50	Concrete Footings & Foundations Walls, Etc.			
3	54,895.00	Stone Masons' Work			
4	229,040.00	Reinforced Concrete Work			
5	995,465.00	Cut Stone Work, Carving, etc.	50,000.00		\$ 50,000.00
5	336,452.00	Brickwork (Common Brick)	18,629.00		
5	35,634.00	Hollow Tile Partitions, Floors, Etc.			
6	277,612.40	Carpenter and Joiner Work			
6	20,000.00	Hardware			
7	41,500.00	Structural Steel Work			
7	180,784.00	Ornamental Iron & Metal Work			
8	29,990.00	Tinsmiths' & Sheet Metal Work			
9	103,377.00	Plasterers' Work			
11	219,067.00	Marble & Tile Work			
12	42,000.00	Painting			
14	64,050.00	Concrete Piles			
15	2,177.00	Plumbing			
	\$2,859,750.00	Totals	\$115,629.00	\$ 65,629.00	\$ 50,000.00
		Less 15%	17,344.35	9,847.05	7,500.00
		Less Previous Payments	\$ 98,285.65	\$ 55,784.65	\$ 42,500.00
		Amount of this Estimate	\$ 55,784.65		
			\$ 42,500.00		

EXHIBIT 4.

Deposition. P. G. McTavish, Oct. 12, 1913. Hugh J. Macdonald, P. M.
APPLICATION FOR PAYMENT.

Progress Estimate No. 4.

Building: Parliament, at Winnipeg.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$131,750.00 for Work done to date as per this detailed statement. Date of Contract, July 16, 1913. Certificate No. 2014, issued June 19, 1914.

Thos. Kelly & Sons, Contractors.

June 18, 1914.

No	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$ 10,959.50	\$ 57,939.50	Excavators Works, Drains, Etc.	\$ 47,000.00	\$ 47,000.00	\$ 10,000.00
2	159,746.60	169,746.50	Concrete Footings & Foundations Walls, Etc.			
3		54,895.00	Stone Masons' Work			
4	845,465.00	995,465.00	Reinforced Concrete Work	100,000.00	50,000.00	50,000.00
5	227,823.00	336,452.00	Cut Stone Work, Carving, Etc.	108,629.00	18,629.00	90,000.00
6	30,634.00	35,634.00	Brickwork (Common Brick)	5,000.00		5,000.00
7		277,612.40	Hollow Tile Partitions, Floors, Etc.			
8		20,000.00	Carpenter and Joiner Work			
9		41,500.00	Hardware			
10		180,784.00	Structural Steel Work			
11		29,990.00	Ornamental Iron & Metal Work			
12		103,377.00	Tinsmiths' & Sheet Metal Work			
13		219,067.00	Plasterers' Work			
14		42,000.00	Marble & Tile Work			
15		64,050.00	Painting			
		2,177.00	Concrete Piles			
			Plumbing			
		\$2,839,750.00	Totals	\$270,629.00	\$115,629.00	\$155,000.00
			Less 15%	40,594.35	17,344.35	23,250.00
			Less Previous Payments	\$230,034.65	\$ 98,284.65	\$131,750.00
			Amount of this Estimate	\$131,750.00		\$131,750.00

Progress Estimate No. 5.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$107,950.00 for work done to date as per this detailed statement. Date of contract, July 13th, 1913. Certificate No. 2017, issued July 31, 1914.

Building: Parliament, at Winnipeg.

Thos. Kelly & Sons, Contractors.

July 28th, 1914

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$10,959.50	\$57,959.50	Excavators Works, Drains, Etc.	\$47,000.00	\$47,000.00	\$ 5,000.00
2	154,746.50	169,746.50	Concrete Footings & Foundations Walls, Etc.	15,000.00	10,000.00	50,000.00
2	4,895.00	54,985.00	Stone Masons' Work	50,000.00		
3		229,040.60	Reinforced Concrete Work			
4	800,465.00	995,465.00	Cut Stone Work, Carving, Etc.	145,000.00	100,000.00	45,000.00
5	200,823.00	336,452.00	Brickwork (Common Brick)	135,629.00	108,629.00	27,000.00
5	30,634.00	35,634.00	Hollow Tile Partitions, Floors, Etc.	3,000.00	5,000.00	
6		277,612.40	Carpenter and Joiner Work			
6		20,000.00	Hardware			
7		41,500.00	Structural Steel Work			
7		180,784.00	Ornamental Iron & Metal Work			
8		29,990.00	Tinsmiths' & Sheet Metal Work			
9		103,377.00	Plasterers' Work			
11		219,067.00	Marble & Tile Work			
12		42,000.00	Painting			
14		64,650.00	Concrete Piling			
15		2,177.00	Plumbing			
			Totals	\$397,629.00	\$270,629.00	\$127,000.00
			Less 15%	59,644.35	40,594.35	19,050.00
			Less Previous Payments	\$337,984.65	\$40,594.35	\$297,390.30
			Amount of this Estimate	\$230,034.65		\$19,050.00
				\$107,950.00		

Deposition. P. G. McTavish, Oct. 12th, 1915. Hugh J. Macdonald, P. M.
 APPLICATION FOR PAYMENT.

EXHIBIT 6.

Progress Estimate No. 6.

Oct. 21, 1914

BUILDING: Parliament, at Winnipeg.
 To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$51,850.00 for work done to date as per this detailed statement. Date of contract, July 16, 1913. Certificate No. 2021, issued Oct. 27th, 1914.

Thos. Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$ 3,959.50	\$ 57,959.50	Excavators Works, Drains, Etc.	\$ 54,000.00	\$ 47,000.00	\$ 7,000.00
2	139,746.00	169,746.50	Concrete Footings & Foundations Walls, Etc.	30,000.00	15,000.00	15,000.00
3	895.00	54,895.00	Stone Masons' Work	54,000.00	50,000.00	4,000.00
4	224,040.00	229,040.60	Reinforced Concrete Work	5,000.00		5,000.00
5	780,465.00	995,465.00	Cut Stone Work, Carving, Etc.	165,000.00	145,000.00	20,000.00
6	190,823.00	336,452.00	Brickwork (Common Brick)	145,629.00	135,629.00	10,000.00
7	30,634.00	55,634.00	Hollow Tile Partitions, Floors, Etc.	5,000.00	5,000.00	
8		277,612.40	Carpenter and Joiner Work			
9		20,000.00	Hardware			
10		41,500.00	Structural Steel Work			
11		180,784.00	Ornamental Iron & Metal Work			
12		29,990.00	Tinsmiths' & Sheet Metal Work			
13		163,377.00	Plasterers' Work			
14		219,067.00	Marble & Tile Work			
15		42,000.00	Painting			
		64,050.00	Concrete Piles			
		2,177.00	Plumbing			
Totals				\$458,629.00	\$397,629.00	\$61,000.00
Less 15%				68,794.35	59,644.35	9,150.00
Less Previous Payments				389,834.65	337,984.65	51,850.00
Amount of this Estimate				\$51,850.00		

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EXHIBIT 7.

Deposition P. G. McTavish. Oct. 12, 1915. Hugh J. Macdonald,
P. M.

Attached to an "application for payment" form.

Thos. Kelly and Sons.

WINNIPEG, Nov. 17, 1913.

Provincial Government, Department of Public Works.

Progress Estimate #1.

Caisson Foundation. New Parliament Building.

To labor and materials supplied for above as follows:

Concrete with reinforcing,			
Cubic yards	7,317 @	\$12.00	\$87,804.00
Excavation "	7,317 @	7.00	51,219.00
Timbering. B. M. feet	246,560 @	40.00	9,862.40
Iron Caisson rings and bolts...	324,280 lb. @	.07	22,699.50
			<hr/>
			\$171,585.00
Less 15%			25,737.75
			<hr/>
Net			\$145,847.25

(Approximately 9,871 cub. yds. concrete put in to date—Nov. 18/13. W. A. Elliott.)

EXHIBIT 8.

Deposition of P. G. McTavish. Oct. 12, 1915. Hugh J. Macdonald, P. M.

Thos. Kelly and Sons.

WINNIPEG, December 2, 1913.

Provincial Government, Department of Public Works, City.

Progress Estimate #2.

Caisson Foundation. New Parliament Building.

To labor and materials supplied for above as follows:

Concrete with reinforcing,			
Cubic yards	13,431 @	\$12.00	\$161,172.00
Excavation "	13,431 @	7.00	94,017.00
Timbering. B. M. feet	452,640 @	40.00	18,105.60
Iron caisson rings and bolts...	595,320 lbs. @	.07	41,672.40
			<hr/>
			\$314,967.00
Less 15%			47,245.05
			<hr/>
			\$267,721.95
Less estimate No. 1 paid			145,847.25
			<hr/>
Amount of this estimate			\$121,874.70

EXHIBIT 9.

Deposition P. G. McTavish. Oct. 12, 1915. Hugh J. Macdonald,
P. M.

Thos. Kelly and Sons.

WINNIPEG, January 9, 1914.

Provincial Government, Department of Public Works, City.

Progress Estimate # 3.

Caisson Foundation. New Parliament Building.

To labor and materials supplied for the above as follows:

Concrete with reinforcing,			
Cubic Yards	19,357 @	\$12.00	\$232,284.00
Excavation "	19,357 @	7.00	135,499.00
Timbering. B. M. feet.	734,160 @	40.00	29,366.40
Iron caisson rings and bolts.	965,580 lbs. @	.07	67,590.60
			<hr/>
			\$464,740.00
Less 15%			69,711.00
			<hr/>
			\$395,029.00
Less estimates 1 and 2 paid			267,721.95
			<hr/>
Amount of this estimate.			\$127,307.05

EXHIBIT 10.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald,
P. M.

Thomas Kelly and Sons,

Winnipeg.

Provincial Government, Department of Public Works.

Progress Estimate #4.

Caisson Foundation. New Parliament Building.

To labor and materials supplied for above as follows:

Concrete with reinforcing,			
Cubic yards	27,680 @	\$12.00	\$332,160.00
Excavation "	27,680 @	7.00	193,760.00
Timbering. B. M. feet.	1,015 M @	40.00	40,600.00
Iron caisson rings and bolts.	667 tons @	140.00	93,380.00
			<hr/>
			\$659,900.00
Less 15%			98,985.00
			<hr/>
			\$560,915.00
Less estimates 1, 2 & # —			395,029.00
			<hr/>
Amount of this estimate.			\$165,886.00

EXHIBIT 11.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. MacDonald, P. M.

Thos. Kelly and Sons,

Winnipeg, March 7, 1914.

Provincial Government, Department of Public Works.

Progress estimate #5.

Caisson Foundation. New Parliament Building.

To labor and materials supplied for above as follows:

Concrete with reinforcing,			
Cubic yards	35993 @	\$12.00	\$431916.00
Excavation	35993 @	7.00	251951.00
Timbering. B. M. feet	1213M @	40.00	48520.00
Iron caisson rings and bolts, 797.5 tons @	140.00		111650.00
			<hr/>
			\$844037.00
Less 15%			126605.55
			<hr/>
			\$717431.45
Less estimates 1, 2, 3, 4			560915.00
			<hr/>
Amount of this estimate			\$156516.00

EXHIBIT 12.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. MacDonald, P. M.

Thos. Kelly and Sons,

Winnipeg, April 10, 1914.

Provincial Government, Department of Public Works.

Progress estimate #6 final.

Caisson Foundation. New Parliament Building.

To labor and materials supplied for above as follows:

Concrete with reinforcing,			
Cubic yards	35993 @	\$12.00	\$431916.00
Excavation	35993 @	7.00	251951.00
Timbering. B. M. feet	1213M @	40.00	48520.00
Iron caisson rings and bolts, 797.5 tons @	140.00		111650.00
			<hr/>
			\$844037.00
Less estimates 1-5 inclusive			717431.45
			<hr/>
			\$126605.55
Amount of draw back on estimates #1-5, less			
amount included in our tender for concrete piles			64050.00
			<hr/>
Amount of this estimate			\$62555.55

EXHIBIT 13.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 1. June 2d, 1914.
 To the Provincial Architect, Winnipeg. Sir:—We hereby make application for a payment of \$80,750.00 for work done to date
 as per this detailed statement. Date of Contract, March 26, 1914. Certificate No. 2,012, issued June 9, 1914.

Thos. Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of		Amount asked per this Estimate
				Work done to Date	Previous Payments	
7	\$ 135,100.00	\$ 230,100.00	Caisson Grillage & Grillage Beams.....	\$95,000.00		\$95,000.00
			Totals.....	\$95,000.00		\$95,000.00
	\$ 135,100.00	\$ 230,100.00	Less 15%.....	14,250.00		14,250.00
				\$80,750.00		\$80,750.00
			Amount of this Estimate.....	\$80,750.00		

EXHIBIT 14.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 2.

Building: Parliament at Winnipeg.

To the Provincial Architect, Winnipeg. Sir:—Hereby make application for a payment of \$85,000.00 for work done to date as per this detailed statement. Date of contract, Mar. 26, 1914. North wing. Certificate No. 2,015, issued July 8, 1914.

Thos. Kelly & Sons, Contractors.

July 3d, 1914.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
7		\$ 230,100.00	Caisso: Grillage and Grillage Beams.....	\$ 195,000.00	\$ 95,000.00	\$ 100,000.00
		\$ 230,100.00	Totals.....	\$ 195,000.00	\$ 95,000.00	\$ 100,000.00
			Less 15%.....	29,250.00	14,250.00	15,000.00
			Less Previous Payments.....	\$ 165,750.00	\$ 80,750.00	\$ 85,000.00
			Amount of this Estimate.....	\$ 85,000.00		

EXHIBIT 15.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 3.

Building: Parliament at Winnipeg.

To the Provincial Architect, Winnipeg. Sir:—We hereby make application for a payment of \$29,835.00 for work done to date as per this detailed statement. Date of contract, March 26th, 1914. North wing steel. Certificate No. 2,018, issued July 31, 1914.

Thos. Kelly & Sons, Contractors.

July 29th, 1914.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
7	\$	230,100.00	Caisson Grillage and Grillage Beams.....	\$ 230,100.00	\$ 195,000.00	\$ 35,100.00
			Totals.....	\$ 230,100.00	\$ 195,000.00	\$ 35,100.00
			Less 15%.....	34,515.00	29,250.00	5,265.00
				\$ 195,585.00	\$ 165,750.00	\$ 29,835.00
			Less Previous Payments.....	165,780.00		
			Amount of this Estimate.....	\$ 29,835.00		\$ 29,835.00

EXHIBIT 16.

Deposition P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 1.

July 3d, 1914.

Parliament Building at Winnipeg.

To the Provincial Architect, Winnipeg. Sir:—We hereby make application for a payment of \$157,250.00, made up as per detailed statement below, for work done to this date applying against grillage for dome section and south wing. Dated July 20, 1914. Certif. 2,016. July 8, 1914.

Thos. Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
7		\$ 215,000.00	Caisson Grillage, Grillage Beams and Concrete...	\$ 185,000.00		\$ 185,000.00
		\$ 215,000.00	Totals.....	\$ 185,000.00		\$ 185,000.00
			Less 15%.....	27,750.00		27,750.00
				\$ 157,250.00		\$ 157,250.00
			Amount of this Estimate.....	\$ 157,250.00		

EXHIBIT 17.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

July 29, 1914.

Progress Estimate No. 2.

Building: Parliament, at Winnipeg.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a Payment of \$25,500.00 for Work Done to date as per this Detailed Statement. Date of Contract, July 20, 1914. Caisson grillage for Dome section & South Wing. Certificate No. 2020, issued July 30, 1914.

Thos. Kelly & Sons, Contractors.

No.	Detailed Balance to Complete Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
7	\$215,000.00	Caisson Grillage, Grillage Beams & Concrete....	\$215,000.00	\$185,000.00	\$ 30,000.00
		Totals.....	\$215,000.00	\$185,000.00	\$ 30,000.00
		Less 15%.....	32,250.00	27,250.00	4,500.00
		Less Previous Payments.....	\$182,750.00	\$157,250.00	\$ 25,500.00
		Amount of this Estimate.....	\$ 25,500.00		\$ 25,500.00

EXHIBIT 18.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

Progress Estimate No. 1 and Final.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$7,040.00 for work done to date as per this detailed statement. Date of Contract, Aug. 25, 1913. Sewerage system. Certificate No. 2003, issued Dec. 15, 1913.

Thos. Kelly & Sons, Contractors.

November 25, 1913.

APPLICATION FOR PAYMENT.

Building: Parliament, Winnipeg.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
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Totals.....\$7,040.00

Certified Correct:
"W. A. Elliott," Inspector.
Nov. 25, 1913.

\$7,040.00

EXHIBIT 19.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 1.

Building: Parliament, at Winnipeg.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$29,911.50 for work done to date as per this detailed statement. Date of Contract, May 22, 1914. Changing rubble walls in basement to brick. Certificate No. 2019, issued July 31, 1914.

July 28, 1914.

Thos. Kelly & Sons, Contractor.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
5			Brickwork (Common Brick).....	\$35,190.00		\$35,190.00
			Totals.....			35,190.00
			Less 15%.....			5,278.50
						\$29,911.50
			Amount of this Estimate.....	\$29,911.50		\$29,911.50

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EXHIBIT 20.

Deposition of P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald,
P. M.

Attached to "application for payment" form.

WINNIPEG, Dec. 15th, 1913.

Provincial Government of Manitoba.
Department of Public Works.

Re New Parliament Buildings.

To excavating done previous to moving site of building
40.0 to the south 1506 yards @ \$1.50..... \$2259.00

O. K. as regards number of yards.

(Signed)

W. A. ELLIOTT, *Inspector.*

Note—Price of excavating reduced from \$2 per cubic yards to
\$1.50.

Certified correct.

(Signed)

V. W. HORWOOD,

Provincial Architect.

March 4/14.

134½ *Certificate to be Attached to Documentary Evidence Accompanying Requisitions in the United States for Extradition.*

Consulate General of the United States.

WINNIPEG, MANITOBA,
CANADA, October 12th, 1915.

I, Frederick M. Ryder, Consul General of the United States at Winnipeg, Canada, hereby certify that the annexed papers being a copy of the information of Edward J. Elliott, of the City of Winnipeg, Province of Manitoba, Chief of Provincial Police, copy of warrant; depositions of Henry Alexander Bowman, Geoffrey H. Walker, Harry Frank Wilson, Malcolm McLean, Charles Henry Dancer, Ernest Edmund Brydon-Jack, J. Bender Priestman, Stephen Clifford Oxtou, Paul Schioler, William Salt, Peter Gordon McTavish, Victor William Horwood, Norman Woodruff Warren, Frederick Fearnley, Henry W. Whitle, George Winters, Frank Worthington Simon, J. H. G. Russell, H. B. Lyall, Leopold Villeroy, William John Ptolemy, John Allen and the exhibits therein referred to the certificates of Sir Hugh John Macdonald, Police Magistrate and of the Provincial Secretary and the affidavits of James Perkins and Joseph Donovan,

the stenographers who took the depositions proposed to be used upon the application for the extradition from the United States of America of Thomas Kelly charged with the crime of theft and receiving money, valuable securities and other property knowing the same to have been embezzled, stolen or fraudulently obtained alleged to have been committed in the City of Winnipeg in the Province of Manitoba in the Dominion of Canada are properly and legally authenticated so as to entitle them to be received in evidence for similar purposes by the tribunals of the Province of Manitoba in the Dominion of Canada required by Act of Congress of August 3rd, 1882.

And I further certify that the signature of J. W. Armstrong on page Number 3 of this document at the foot thereof is the proper handwriting of the Honourable James William Armstrong, Provincial Secretary for the Province of Manitoba in the Dominion of Canada.

In Witness Whereof I hereby sign my name and cause the
135 seal of the Consulate General to be affixed this 12th day of
October, A. D. 1915.

[SEAL.]

FREDERICK M. RYDER,
*Consul General for the United States
at Winnipeg, Canada.*

(Stamp:) American Consular Service. 10/12/15. F. M. R.
\$2 Fee Stamp.

In forwarding the annexed papers to be used in support of an application for the surrender from the United States of Thomas Kelly, charged with the crimes of theft of money, valuable securities or other property and receiving money, valuable securities or other property, alleged to have been committed in the City of Winnipeg, in the Province of Manitoba, in Canada.

I hereby certify that the signature on the annexed document certifying to the correctness of the copy of the warrant, information and depositions on which the warrant was granted, and the several Exhibits, is the signature of Sir Hugh J. MacDonald, Police Magistrate in and for the Province of Manitoba and of the City of Winnipeg, in Manitoba, having authority to issue and receive the same. And I further certify that such document so signed by a Police Magistrate having jurisdiction in the place where the same were taken and authenticated by a Minister of State and sealed with his official seal would be received in evidence for similar purpose by the tribunals of the said Province of Manitoba and Dominion of Canada.

In Witness Whereof I have this 12th day of October, 1915, set my hand and affixed my seal of office at the City of Winnipeg aforesaid.

[SEAL.]

J. W. ARMSTRONG,
Provincial Secretary.

CANADA,

*Province of Manitoba,**City of Winnipeg, To wit:*

In the Matter of the Application for the Extradition of THOMAS KELLY from the United States of America to Great Britain on the Charge of Larceny (Theft) and Receiving.

I, the undersigned Police Magistrate in and for the Province of Manitoba, and of the city of Winnipeg, hereby certify that the written and printed matter contained in the annexed 5 to 107 pages, inclusive, is a true copy of the original affidavits of James Perkins, Joseph L. Donovan, Florence M. Kelly, stenographers; of the Information of Edward J. Elliott, laid and sworn before me on the 12th day of October, A. D. 1915, and the depositions of Henry A. Bowman, Geoffrey H. Walker, Hugh Frank Wilson, Malcolm McLean, Charles Henry Dancer, Ernest E. Brydone-Jack, J. Bender Priestman, Stephen Clifford Oxtan, Paul Schioler, William Salt, Peter Gordon McTavish, Victor W. Horwood, Norman Woodruff, Warren Frederick Fearnley, Henry W. Whitla, George Winters, Frank Worthington Simon, J. H. G. Russell, H. B. Lyall, Leopold Villeroy, William John Ptolemy and John Allen in support thereof, taken under oath before me on the 11th and 12th days of October, A. D. 1915, and of the exhibits therein referred to respectively; and of the warrant issued by me for the apprehension of the said Thomas Kelly.

Given under my hand and seal at my office aforesaid this 12th day of October, A. D. 1915.

HUGH J. MACDONALD,
*Police Magistrate in and for the Province of
Manitoba and of the City of Winnipeg.*

CANADA,

*Province of Manitoba,**City of Winnipeg:*

In the Matter of the Application for the Extradition of THOMAS KELLY from the United States of America to Great Britain on the Charges of Larceny (Theft) and Receiving.

I, James Perkins, of the City of Winnipeg, Province of Manitoba, Official Court Reporter, having been sworn to take evidence in this matter as prescribed by section 683 of the Criminal Code of Canada, make oath and say that the following is a true and correct transcript of the depositions of William John Ptolemy, Leopold Villeroy, H. B. Lyall, J. H. G. Russell, Frank Worthington Simon, George Winters and Henry W. Whitla, taken before Sir Hugh MacDonald, Police Magistrate in and for the Province of Manitoba on the 11th and 12th days of October, 1915.

(S'g'd)

"JAMES PERKINS."

Sworn before me in the City of Winnipeg, in the Province of Manitoba, this 12th day of October, 1915.

(S'g'd)

H. J. SYMINGTON,
A Commissioner in B. R.

136 CANADA,
Province of Manitoba,
City of Winnipeg, To wit:

In the Matter of the Application for the Extradition of THOMAS KELLY from the United States of America to Great Britain, on the Charge of Larceny (Theft) and Receiving.

I, Joseph Lawrence Donovan, of the city of Winnipeg, in the Province of Manitoba, Court Reporter, having been sworn to take the evidence in this matter as prescribed by Section 683 of the Criminal Code of Canada, make oath and say that the following is a true and correct transcript of the depositions of,

Victor W. Horwood,
Peter Gordon McTavish,
William Salt,
Paul Schioler,
Stephen Clifford Oxtan,
J. Bender Priestman,
Ernest Edmund Brydone-Jack,
Charles H. Dancer,
Malcolm McLean,
Harry Frank Wilson,
John Allen,
Geoffrey H. Walker, and
Henry Alexander Bowman,

taken before Sir Hugh John Macdonald, Police Magistrate in and for the Province of Manitoba, on the 11th and 12th day- of October, A. D. 1915.

(S'g'd)

"J. L. DONOVAN."

Sworn before me at the city of Winnipeg, in the Province of Manitoba, this 12th day of October in the year of our Lord, 1915.

(S'g'd)

"H. J. SYMINGTON,"
A Commissioner in B. R.

CANADA,

Province of Manitoba,

City of Winnipeg, To wit:

In the Matter of an Application for the Extradition of THOMAS KELLY from the United States of America to Canada on the Charge of Theft and Receiving, Alleged to Have Been
136½ Committed in the City of Winnipeg, in the Province of Manitoba.

I, Florence M. Kelly, of the City of Winnipeg, in the Province of Manitoba, Official Court Stenographer, having been sworn to take evidence in this matter as prescribed in Section 683 of the Criminal Code of the Dominion of Canada, make oath and say:

That the following is a true and correct transcript of the depositions of Frederick Fearnley and Norman Woodruff Warren taken before Sir Hugh John Macdonald, a Police Magistrate in and for the Province of Manitoba and of the City of Winnipeg, on the 12th day of October, A. D. 1915.

(S'g'd)

"FLORENCE M. KELLY."

Sworn before me at the City of Winnipeg in the Province of Manitoba this 12th day of October, A. D. 1915.

(S'g'd)

"H. J. SYMINGTON."

JOHN ALLEN, duly sworn, saith as follows:

I am a practising Barrister and Attorney for the Province of Manitoba, in the City of Winnipeg, in the Dominion of Canada. I am Deputy Attorney-General for the Province of Manitoba. I am familiar with the Criminal Law of Canada, which is found in the Criminal Code, Chapter 146 of the Revised Statutes of Canada, 1906, and amending Acts. The Criminal Law is the same for all Canada, being enacted by the Parliament of Canada at Ottawa. By the Criminal Code of Canada, section 347, theft is defined as follows:

347. Theft defined.—Theft or stealing is the act of fraudulently and without color of right taking, or fraudulently and without color of right converting to the use of any person, anything capable of being stolen, with intent,—

(a) to deprive the owner, or any person having any special property or interest therein, temporarily, or absolutely, of such thing, or of such property or interest; or,

(b) to pledge the same or deposit its as security; or,

(c) to part with it under a condition as to its return which the person parting with it may be unable to perform; or,

(d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion.

2. Theft is committed when the offender moves the thing

137 or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it.

3. The taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment.

4. It is immaterial whether the thing converted was taken for the purpose or conversion, or whether it was, at the time of the conversion in the lawful possession of the person converting.

By sections 386 and 387 of the said Criminal Code, the following punishments are provided for theft:

386. Stealing things not otherwise provided for.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who steals anything for the stealing of which no punishment is otherwise provided, or commits in respect thereof any offence for which he is liable to the same punishment as if he had stolen the same.

2. The offender is liable to ten years' imprisonment if he has been previously convicted of theft.

387. Additional punishment when value exceeds \$200.—If the value of anything stolen, or in respect of which any offence is committed for which the offender is liable to the same punishment as if he had stolen it, exceeds the sum of two hundred dollars, the offender is liable to two years' imprisonment, in addition to any punishment to which he is otherwise liable for such offence."

The word "theft" in our said Criminal Code has the same meaning as the word "larceny" as used in the English Law and as used, I believe, in many of the States of the American Union, including the State of Illinois. Section 399 of the said Criminal Code of Canada is as follows:

399. Receiving property obtained by any indictable offence.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who receives or retains in his possession anything obtained by any offence punishable upon indictment, or by any acts wheresoever committed, which, if committed in Canada, would have constituted an offence punishable upon indictment, knowing such thing to have been so obtained.

Section 444 of the said Criminal Code of Canada is as follows:

444. Conspiracy to defraud.—Every one is guilty of an indictable offence and liable to seven years' imprisonment who conspires with any other person, by deceit or falsehood or other fraudulent means, to defraud the public or any person, ascertained or unascertained, or to affect the public market price of stocks, shares, merchandise, or anything else publicly sold, whether such deceit or falsehood or other fraudulent means would or would not amount to a false pretence as hereinbefore defined."

Hereto attached, marked Exhibit A, is a copy of an information laid against Sir Rodmond P. Roblin, Walter H. Montague, George R. Coldwell and James H. Howden, who, on the charge of conspiracy mentioned therein, were committed for trial on or about the 1st day of October, 1915, after the usual preliminary hearing before a Police Magistrate, according to our Criminal Laws. The Thomas Kelly referred to in said information is the same Thomas Kelly as is referred to in the information, warrant and depositions attached hereto, covering the charge of theft (larceny) and receiving.

I have perused the depositions attached hereto, and, in my opinion, the evidence disclosed by the said depositions shews the crime of larceny (theft) or receiving, aforesaid, under the laws of Canada.

Criminal Code, Form No. 3.

Information or Complaint on Oath.

CANADA,

Province of Manitoba,

Eastern Judicial District:

The Information of EDWARD J. ELLIOTT, of the City of Winnipeg, In the Province of Manitoba, Chief of Provincial Police, taken upon oath before me, the undersigned, one of His Majesty's Justices of the Peace or Police Magistrates in and for the said Province of Manitoba, at the City of Winnipeg, aforesaid, this twenty-eighth day of August in the year of our Lord one thousand nine hundred and fifteen

Who saith that he has reason to believe and does believe that Sir Rodmond P. Roblin, Walter H. Montague, George R. Coldwell and James H. Howden between the first day of May, A. D. 1913, and the 12th day of May, A. D. 1915, at Winnipeg aforesaid did unlawfully by fraudulent means conspire together and with Thomas Kelly, R. M. Simpson, Victor W. Horwood and others to this informant unknown to defraud His Majesty the King in the Right of the Province of Manitoba.

138 Exhibit A. Deposition and evidence of John Allen, 12th October, 1915.

HUGH J. MACDONALD, P. M.

contrary to the form of the Statute made and provided.

E. J. ELLIOTT.

Taken and sworn before me the day and year and at the place first above mentioned.

A. A. AIRD, J. P.

Criminal Code, Form No. 3.

Information or Complaint on Oath.

CANADA,

Province of Manitoba, Eastern Judicial District:

The Information of Edward J. Elliott, of the City of Winnipeg.

In the Province of Manitoba, Chief of Provincial Police, taken upon oath before me, the undersigned, one of His Majesty's Justices

of the Peace or Police Magistrates in and for the said Province of Manitoba, at the City of Winnipeg in Manitoba this twelfth day of October in the year of our Lord one thousand nine hundred and fifteen.

Who saith that he hath reason to believe and doth believe that Thomas Kelly of the said City of Winnipeg, Contractor, between the first day of May, A. D. 1913, and the twelfth day of May, A. D. 1915, at Winnipeg aforesaid, unlawfully stole money, valuable securities or other property belonging to His Majesty the King in the Right of the Province of Manitoba, and at the said place and times, also unlawfully received money, valuable securities or other property belonging to His Majesty the King in the Right of the Province of Manitoba, which had theretofore been embezzled, stolen or fraudulently obtained by means of an unlawful conspiracy by fraudulent means, between Thomas Kelly aforesaid, Sir Rodmond P. Roblin, Walter H. Montague, James H. Howden, George R. Coldwell, R. M. Simpson, Victor W. Horwood and others to the informant unknown to defraud His Majesty the King in the Right of the Province of Manitoba, the said Thomas Kelly, then and there well knowing that said money, valuable securities or other property had theretofore been embezzled, stolen or fraudulently obtained by means of the said unlawful conspiracy, contrary to the form of the Statute made and provided.

(S'g'd)

E. J. ELLIOTT.

Taken and sworn before me the day and year and at the place first above mentioned.

HUGH J. MACDONALD, *J. P., P. M.*

(Criminal Code, Section- 563 and 843.)

(Cut.)

Warrant to Apprehend a Person Charged With an Offence.

CANADA,

Province of Manitoba, Eastern Judicial District:

To all or any of the Constables or other Peace Officers in the Province of Manitoba:

Whereas Thomas Kelly of the City of Winnipeg in Manitoba, Contractor, hath this day been charged upon oath before the undersigned, one of His Majesty's Justices of the Peace or Police Magistrates in and for the said Province of Manitoba, for that he, between the first day of May, A. D. 1913, and the twelfth day of May, A. D. 1915 at Winnipeg aforesaid, unlawfully stole money, valuable securities or other property belonging to His Majesty the King in the Right of the Province of Manitoba and at the said place and times also unlawfully received money, valuable securities or other property belonging to His Majesty the King in the Right

of the Province of Manitoba, which had theretofore been embezzled, stolen or fraudulently obtained by means of an unlawful conspiracy, by fraudulent means, between Thomas Kelly aforesaid, Sir Rodmond P. Roblin, Walter H. Montague, George R. Coldwell, R. M. Simpson, Victor W. Horwood and others to the informant herein, unknown, to defraud His Majesty the King in the Right of the Province of Manitoba, the said Thomas Kelly then and there well knowing that said money, valuable securities or other property had theretofore been embezzled, stolen or fraudulently obtained by means of the said unlawful conspiracy.

139 These are therefore to command you, in his Majesty's name, forthwith to apprehend the said Thomas Kelly and to bring him before me or some other of His Majesty's Justices of Peace, or Police Magistrates, in and for the said Province of Manitoba to answer unto the said charge and to be further dealt with according to law.

Given under my hand and seal this twelfth day of October, A. D. 1915, at Winnipeg in the Province of Manitoba aforesaid.

[SEAL.] (S'g'd) HUGH J. MACDONALD, J. P., P. M.

Deposition of Leopold Villeroy.

LEOPOLD VILLEROY, having been duly sworn, deposeth as follows:

I have been an inspector in the employ of the Provincial Government of the Province of Manitoba from September, 1913, until after the resignation of Sir Rodmond Roblin's cabinet on May 12, 1915. It was my duty to check the concrete which went into the caissons put down to support the foundations of the new parliament buildings, and I was on the parliament buildings grounds continuously during all that time, and all the caissons with the exception of perhaps three were constructed during the time I was there. I assisted William Salt to measure the depths of caissons in the case of sixty caissons located in various parts of the building area, and covering practically every part. The measurements which I assisted in making ran all the way from 41 feet 9 inches to 45 feet 6 inches. I had continual difficulty in keeping the employees of Thomas Kelly & Sons to the quantities specified in the specifications. The said caissons were constructed almost entirely of gravel and cement. The employees of the said firm were continually putting in too much gravel proportionately to the cement. The proportion of cement to gravel generally ran 1 to 8 or sometimes 1 to 9.

Lawrence Kelly was there nearly every day. Thomas Kelly was often there. Thomas Kelly told the men to heap up the wheelbarrows with gravel, thereby making the proportion of gravel to cement larger. Charlie Kelly and William Salt figured up the concrete, and Kelly's man checked up the materials supplied.

139½ In excavating for the caissons the earth was held up by lumber placed around the outside of the excavation and held against the earth by iron rings. When they began to fill in the excavation, the lumber and the rings were taken out and this lumber

and these rings were used over and over again in the caissons. There was not more than 100,000 feet of lumber used in connection with the whole 369 caissons under the Parliament Building. This lumber was cull lumber worth about \$20.00 a thousand feet. There was not more than 40 tons of iron rings used in connection with the construction of the whole of said caissons.

Now shown to me marked Exhibit 1, is a photograph which is a very good likeness of the said Thomas Kelly. I recognize the said photograph as that of the Thomas Kelly herein referred to.

WILLIAM JOHN PTOLEMY, having been duly sworn, upon his oath saith:

I have been Deputy Provincial Treasurer for the Province of Manitoba for many years. In order to obtain money from His Majesty, the King, it is necessary that there should be a proper voucher coming from the department authorizing the expenditure and properly certified by the officers of that department having charge of the expenditure then passing through the hands of the Auditor to our department for payment. In the case of payments in respect of the Parliament Buildings, a proper voucher would be presented to the Auditor for the Province accompanied, by, among other things, the certificate of the Architect, and without this document payments will not be made. The Auditor is Frederick Fearnley. This practice was followed in every instance of payments being made to Thomas Kelly & Sons in connection with the New Parliament Buildings. All cheques are signed by the Provincial Treasurer or by myself and are countersigned by the Provincial Auditor before hand.

CHARLES HENRY DANCER, being sworn, upon his oath, saith:

I am Deputy Minister of Public Works for the Province of Manitoba, Canada. The printed advertisements for tenders for the construction of the New Parliament Buildings in the city of

140 Winnipeg, from the files of this department, dated May 26th, 1913, required tenders to be put in by twelve o'clock noon on the 2nd day of July, 1913, and to be accompanied by a marked cheque for five per cent. of the amount of the tender to be held as security for the due performance of the contract. On receipt of a bond in favor of his Majesty the King, George the Fifth, executed by Thomas Kelly & Sons, I was instructed by the Honorable G. R. Coldwell, Acting Minister of Public Works for said Province, to have returned to Thomas Kelly & Sons their cheque for \$142,987.50, which had accompanied the tender which was accepted. This was done.

Sometime in the fall of 1914, the Honorable Dr. Montague, Minister of Public Works, in the said Government of Manitoba, asked me to get from H. F. Wilson, the record clerk of the department, the contract between Thomas Kelly & Sons and his Majesty for the construction of the balance of the steel work in the south wing and central portion of the New Parliament Buildings, including the

dome, and accordingly I did so. I then handed the contract to the Honorable Dr. Montague and I never saw the same again. That contract was for \$802,650.00, and to the best of my recollection I witnessed the execution thereof by Thomas Kelly, the senior member of the above firm, on behalf of the said firm. The said Dr. Montague also asked me for the book in which we kept all orders-in-council affecting the public works department, and asked me to turn up the order in council authorizing the making of said contract. I thereupon turned up the said order in council, which appeared on page 216 of that book. Dr. Montague then removed the copy of the order-in-council from the book and destroyed the same.

The photograph now shewn to me and marked Exhibit 1 is a very good likeness of the said Thomas Kelly. I recognize the photograph as that of the said Thomas Kelly herein referred to.

HENRY W. WHITLA, having been duly sworn, upon his oath saith: I am a solicitor practising in the City of Winnipeg, in the Province of Manitoba, Canada. I acted as solicitor for V. W. Horwood lately Provincial Architect for the Province of Manitoba, before the Royal Commission appointed by the Lieutenant Governor-in-Council to investigate the New Parliament Buildings. On April 24th, last, someone telephoned me from the Provincial Architect's office to say that William Salt was coming back and I thereupon communicated with Dr. R. M. Simpson and told him that I had heard that Salt was coming back. I advised said Dr. Simpson to investigate the matter, but he said he would be responsible for any expense incurred and requested me to see a detective agency and ask that enquiry be instituted. The reason I called up Dr. Simpson was that he had acknowledged to me he was providing moneys to reimburse the said V. W. Horwood for what he had expended in connection with the first disappearance of William Salt. I had seen Dr. Simpson in connection with this matter and he told me that he would pay Mr. Horwood the money, amounting to \$1,600. Horwood subsequently told me that Dr. Simpson had paid him \$1,000, and this, Dr. Simpson corroborated, stating he could pay the balance at any time. Dr. Simpson in conversation told me that \$10,000 had already been sent down to be given to Salt sometime before, but that Hook, the messenger, had reported that he had been robbed. As a result of the report of the detective agency employed by me. I saw Dr. Simpson again in the course of two or three days and told him that the detective agency had reported that they had located William Salt in St. Paul and it would be necessary to pay Salt money in order to keep him away. The sum of \$25,000 was mentioned but finally Dr. Simpson brought \$5,000 to my office, and this \$5,000 I handed to Mr. Hatfield, the manager of the said detective agency, in St. Paul, who subsequently reported to me, and I communicated to Dr. Simpson the fact, that Salt would not stay away for less than \$10,000, and that in addition, it would be necessary to pay the detective's expenses, for which I asked the sum of \$1,550. About the 1st of May, 1915, Dr. Simpson brought over the additional

\$5,000 to my office and I transmitted it to Hatfield in St. Paul. Dr. Simpson said that the Honorable J. H. Howden would give me the balance of the money on Monday, and the said Howden paid me \$1,500 on the Monday or Tuesday following, which I used for the detective's and other expenses. I subsequently informed the Honorable Mr. Howden that after making the necessary disbursements for the detectives and other expenses I had \$500 left, which I was crediting to Mr. Horwood. There was a delay in getting the last sum of \$5,000. Either Dr. Simpson or the Honorable Mr. Howden told me that \$3,000 had been borrowed from some fund that had been put up in connection with some election protest. Prior to my trip to St. Paul with the first sum of \$5,000, there was a meeting in my office of Thomas Kelly, his counsel, Mr. F. 141 H. Phippen, the Honorable G. R. Coldwell and the Honorable J. H. Howden and Messrs. A. J. Andrews and F. M. Burbidge, their counsel, and Mr. Sweeney, an expert engineer, and myself. The subject of discussion was the production before the Royal Commission of a letter purporting to bear date the 20th day of September, 1913, and purporting to be signed by Thomas Kelly & Sons making a tender for the lump sum of \$844,037 for the building of the caissons under the Parliament Buildings, which letter was in my possession as Horwood's solicitor. When I came south with the money, I went on to Rochester to see Mr. Horwood, who was about to have an operation there at the hospital of Drs. Mayo Brothers, and while there I received a telegram in code from the said Dr. Simpson, which I now shown to me, and which being translated reads: "Recent developments indicate that it will be in the best interests of everybody to produce the letter, particularly yourself." I afterwards produced this letter, handing it to Mr. A. J. Andrews, solicitor for the late government, and the letter was put in as an exhibit before the Royal Commission. While Horwood was at Rochester, in the State of Minnesota, and about the end of May last, on returning from a trip which I had made to Rochester, I met the Honorable Dr. Montague in St. Paul, who returned on the train with me. In speaking to me about Horwood, he asked me how Horwood was and as to his finances. I informed him as to Horwood's state of health and told him he had very little money, but that he had told me that he had friends who were still sticking to him. Dr. Montague remarked in the course of the conversation, that the best friend a man could have in time of trouble was a good bank account. He said he would make enquiries and see if anything could be done and probably someone, likely Mr. F. H. Phippen, would see me in a day or two about it. The sum of \$25,000 was mentioned in connection with the words, "a good bank account" by him.

GEORGE WINTERS, having been duly sworn, on his oath saith:

I am the Assistant Clerk of the Executive Council of the Province of Manitoba, and have occupied that position for some years. In the first half of July, 1914, I was the Acting Clerk of the Executive

Council. I remember an order in council passed at that time 141½ authorizing a contract between His Majesty and Thomas

Kelly & Sons. I drew up the same and had it sent to Sir Rodmond Roblin's office and to the Lieutenant Governor for signature in both cases. The Lieutenant Governor does not attend meetings of Council, but an order in Council must be signed by him before it becomes effective, and before he signs any Order in Council it is signed by the Premier or Acting Premier.

Now shown to me and marked Exhibit No. 1, is a copy of Order in Council No. 23,147 authorizing a contract to be entered into by the Minister of Public Works on behalf of His Majesty with Thomas Kelly & Sons for the construction of steel work for the south wing, central portion and dome of the New Parliament Buildings, Winnipeg, for \$802,650, which copy is certified by myself. I remember the said Order in Council which was drawn by myself. The recommendation to Council was given to me for the purpose of preparing the Order in Council and Sir Rodmond Roblin was in the chair when the Order in Council was passed. This Order in Council was drawn up in the usual way, and according to the practice of the office, certified copies of this Order in Council would be sent to His Honour, the Lieutenant Governor, the Public Works Department, the Provincial Auditor and to the Provincial Secretary. I have a small book in which I keep track of Orders in Council. Some time about last March I found written on the page containing entries relating to the above Orders in Council words to the effect following: "Never signed by Premier. Held up Council 7." I don't know whose handwriting this was; it was not my handwriting and there should have been no entries there except those made by myself. When I found this I made a memorandum in respect of same, which I have now referred to for the purpose of refreshing my memory. Some time about the middle of May I had occasion to refer to this book of mine, and I found that the page on which appeared the entry referring to Order in Council 23,147 had been abstracted and I have never seen the same since.

FRANK WORTHINGTON SIMON, being duly sworn, upon his oath saith:

I am an architect by profession and the designer of the New Parliament Buildings now being erected in the City of Winnipeg, 142 in the Province of Manitoba. I came to Winnipeg in the fall of 1912, and on the 5th day of November, 1912, I was at a meeting held at the Parliament Buildings in the said City of Winnipeg when there were present, the Honorable Colin H. Campbell, at that time Minister of Public Works, the Honorable G. R. Caldwell, Charles H. Dancer, Deputy Minister of Public Works, Mr. V. W. Horwood, Provincial Architect and my partner, Mr. H. Bodington. It was there stated that it was not necessary to adhere strictly to the approximate estimate of \$2,000,000 for the said building, and \$2,500,000 was suggested, exclusive of heating, lighting, plumbing, ventilation, furniture and fittings. Mr. Horwood advised that caisson foundations going down to rock would probably be required.

Mr. Dancer confirmed this and said he would arrange to have borings put down to ascertain the depth; that this would probably be 50 feet and the caisson foundation would be an extra over the proposed cost of the building. I subsequently received from the office of the Provincial Architect the information that all the holes had been sunk and they varied from 48 feet to 51 feet in depth from the ground level to the rock over the area of the new parliament buildings. I had suggested in my preliminary report that I intended to design the building of reinforced concrete construction, including the dome. I returned to Winnipeg about the beginning of May, 1913, and on May 2d, I attended a meeting, at which were present, Sir Rodmond Roblin, the said G. R. Coldwell and J. H. Howden, all members of the Manitoba Cabinet, who were unanimous in stating they wished the work finished in a high-class manner and did not wish to tie me down to a specific amount, such as \$2,500,000, which had already been mentioned. I presented my plans showing the building constructed as above mentioned, and on May 13th, attended a meeting at the office of the Public Works Department in the Parliament Buildings, at which were present the above mentioned Honorable G. R. Coldwell, Mr. Bowman and Mr. Horwood. The question of change from pile caisson construction was discussed and I explained that caissons would probably involve an extra cost over piles of from 20 to 25 per cent. Mr. Coldwell, on the advice of Messrs. Horwood and Bowman, decided in favor of caissons and asked me to prepare a scheme for such a foundation. Accordingly, on the same day I cabled Mr. Drew, the engineer whom I had engaged, and subsequently wrote a letter in confirmation of the cable. The change that had been decided upon was not communicated by me to any person other than the members of the government and the officials above mentioned. On May 20th, 1913, I had lunch with Mr. Coldwell when he stated that he hoped that tenders might be advertised for on Monday the 26th next. Under the terms of the competition by which I was selected as the designer of the building, it was provided that the government should have the option, if they desired, of employing the designer to supervise the work at a remuneration of one per cent. of the cost, and it was at first arranged between V. W. Horwood, the Provincial Architect, and myself that I should act in conjunction with him and that I was to be the consulting architect in the erection of the building, and this was to go into the specifications. Mr. Horwood subsequently called to say that he wished to delete my name from the specifications as consulting architect, as he had no authority for such a clause. I had a discussion with Mr. Coldwell with reference to the matter and pointed out that in a building of this kind it was practically impossible for the work to be carried out satisfactorily unless the architect who designed it had the supervision, but he stated to me that the government would appoint very efficient inspectors to look after the building and that I need have no apprehension about the building not being carried out in accordance with my plans and specifications. On July 9th, 1913, I had a conference with the said G. R. Coldwell and explained

that it was impossible for the work to be carried out faithfully according to the details and explained that the contractors could deviate from the drawings and that no one but the architect responsible for the design would spot these matters until a great deal of the work had been done. He said they did not want to pay more for consultation fees, and I said it was not money I was looking for, but the best results. I was not employed by the government to inspect, superintend or supervise the work. The question of the foundation was discussed at this conference and I said to the said G. R. Coldwell that on his instructions I had prepared a revised plan for a caisson foundation. He also referred to the substitution of steel for reinforced concrete in the dome, etc. I pointed out that Mr. Horwood had only spoken to me about this after all the working drawings and calculations had been made and a few days before tenders were called, instead of mentioning these objections last October, when in my report I suggested reinforced concrete. On Thursday, July 10th, 1913, the said Horwood called and showed me two tenders received for the Parliament Buildings, one from Thomas Kelly & Sons and one from Peter Lyall & Sons. I expressed my astonishment that they were so close together in total amounts and also pointed out the great difference in the detail statements under the various trades. He said he thought the price was too low and he asked me if I thought the lowest man should get the job. I said yes, as the price was practically the same, but I told him they would require a great deal of watching. He then took the tenders away, promising me full copies of the details, which I never received. On Thursday, July 24th, 1913, I attended a council meeting of the Cabinet at which there were present Sir Rodmond Roblin and three ministers, namely, Coldwell, Armstrong and Bernier, and also Mr. Horwood, the Provincial Architect. They stated that under my contract as architect with them, I had no right to supervision, but naturally, if I cared to do so, on noticing anything wrong, I was at liberty like any other citizen, to draw the attention of the Government to it. They asked me how my caisson plan was progressing. I promised to cable my engineer when the plan of the caissons would be in Winnipeg. On July 25th, 1913, I attended another meeting of the Cabinet Council at which were present all those on the previous day and another person whose name I did not know. At this meeting it was decided to abandon the reinforced concrete work throughout the building and substitute steel constructions encased in concrete and I was instructed to proceed at once with the drawing for this work. They mentioned that steel would be 25 per cent. dearer than reinforced concrete. On Saturday, the 26th day of July, 1913, the said Hon. Mr. Coldwell spoke to me over the telephone and at his suggestion I agreed that as in all likelihood there would be a delay in getting my plans for the caissons, it would be better for the government to get the work done at once themselves and so avoid any claim for delay on the contractors' part. By an order of the Government on the 25th of July preceding the areas around the building were omitted, thereby making a large reduction in the cost. On July

28th, 1913, at my office, Mr. Thomas Kelly, senior member of the said firm of Thomas Kelly & Sons, said he had guessed before making his tender that these might be omitted and therefore he had not allowed for the areas in his tender, though they were on the contract plan which he had signed, and that he did not expect to allow anything for these. He said this was the system of this country. The said Horwood informed me on the same day that he consulted an engineer on caissons and consequently I need not do anything further in the matter. The said Horwood also stated to me that Kelly was not setting out the building according to the enlarged dimensions shown on blueprint No. 32, which was sent to the contractors to be figured on in their tender, for receipt of which I held Kelly's acknowledgment saying he was including it in his tender. Horwood told me that Kelly told the government that he had not figured on these enlarged dimensions and refused to sign the tender and so they let him off. The other contractors figured on these enlarged dimensions. Pursuant to instructions from the government on the 25th of July, I sent instructions by cable to England to have these plans prepared by the same engineer whom I had consulted in regard to the caissons. On August 22nd, 1913, Cameron, an employe in the Provincial Architect's office, told me that he was preparing plans for a frame structure carrying all the walls on each floor on steel beams. I told him this was not contemplated by the government. I also told Sir Rodmond Roblin on the same day that my drawings for replacing concrete by steel were well under way and that it was a pity that they had not told me months before that they did not wish reinforced concrete constructions and then they would have saved the expense of the change and of having a fresh set of drawings for steel construction. Sir Rodmond explained to me that he was really responsible for this change, as he disliked reinforced concrete because he knew of so many failures in Winnipeg and said they didn't like the extra cost. On August 29, 1913, Horwood and Cameron, the engineer in the said Provincial Architect's office, called. Cameron stated to me that he intended to prepare plans for a very heavy skeleton-frame building. Horwood said nothing of the kind had been intended. I told Horwood that in accordance with the government instructions I had taken up the design for replacing concrete with steel and plans were well under way. He said, of course, that being so, Mr. Cameron would not touch that part of the work. On August 30th, 1913, I had a conversation with the said Cameron. He said that it did not matter for the caissons being a little out of center as they were amply large enough, in fact, they were probably too big, but his instructions were that they didn't mind about the cost, but to make sure. It had also been decided by the Council in July that the building should be raised further out of the ground. On the 28th of August I sent a letter to the said Hon. Mr.

144 Coldwell stating that Thomas Kelly & Sons had tendered upon the enlarged dimensions and that I had their acknowledgment in writing thereof and their statement that they had included it in their tender, and I suggested that Thomas Kelly &

Sons be asked to implement their letter. In April I handed my plans for the dome to Mr. Horwood. They were immediately returned by Mr. Horwood, who said that he already had had the steel plans made. I called shortly after on the Hon. Dr. Montague, who had become Minister of Public Works in November preceding, and left the plans with him, saying that I had been instructed by the Cabinet Council on July 25th to have the plans prepared for changing reinforced concrete to steel instead. I was not consulted in reference to any of the contracts which were let for the steelwork, nor in regard to the caissons. In the course of the construction of the portion of the building erected by Thomas Kelly & Sons, I pointed out, among other things, that I found fault with some of the stone-cutting, and complained first to Horwood and then to Sir Rodmond Roblin, but the result was nil. The sole reason given for the change from reinforced concrete was the statement that it was impossible to get good cement and good supervision in Winnipeg and therefore, it was impossible to get good work done. I have been able to refresh my memory as to dates and conversations herein set out from the business diary which I kept in accordance with the usual custom of my profession in England.

Deposition of Geoffrey H. Walker.

GEOFFREY H. WALKER, having been first duly sworn, deposeth as follows:

I am the Prothonotary of the court of King's Bench for the Province of Manitoba and have been such for over thirty years. I was also Registrar of the Royal Commission appointed to investigate the construction of the parliament buildings in the City of Winnipeg, and payments made in respect thereof and all matters relating thereto. Mr. F. H. Phippen, K. C., appeared there with Thomas Kelly, for Thomas Kelly & Sons, and acted as counsel on behalf of said firm before said Royal Commission. On the 29th day of April, 1915, the said F. H. Phippen produced 45 invoices of the cement used by said Thomas Kelly & Sons in the construction of said Parliament buildings, and said they covered the cement used in the said building.

144½ J. BENDER PRIESTMAN, being duly sworn, on oath, saith:

I am Accountant of the Imperial Bank of Canada, in the City of Winnipeg, in the Province of Manitoba, in the Dominion of Canada. The firm of Thomas Kelly & Sons are customers of said Bank. Said firm consisted until about April 29th last of Thomas Kelly, Lawrence C. Kelly, Charles B. Kelly, and Robert Emmett Kelly, now deceased, and since then has, I believe, consisted of all but the latter. The said firm of Thomas Kelly & Sons kept accounts called Tender account, Savings account, and a Current account in the said Bank.

The Tender account shows that on July 2, 1913, a cheque of Thomas Kelly & Sons for \$160,000.00 was accepted by the Bank

and charged to this account, and that on July 3 the said account was credited with the said amount, and a new cheque drawn by Thomas Kelly & Sons on their tender account for \$142,987.50 was accepted by the Bank and charged against this account, the said cheque now shewn to me being as follows:

"Thomas Kelly & Sons, Contractors. No. 2913.

WINNIPEG, July 3, 1913.

"Pay to the Honorable G. R. Coldwell, Acting Minister of Public Works, One hundred and forty-two thousand, nine hundred and eighty-seven dollars and fifty cents, deposit with tender, parliament buildings.

"To the Imperial Bank of Canada."

(Sgd.)

"THOMAS KELLY & SONS,
Per THOMAS KELLY."

The said Thomas Kelly had the right to sign and indorse cheques on behalf of the said firm of Thomas Kelly & Sons and each of the members of said firm, and also J. S. Ferris had the right to indorse cheques on behalf of said firm for deposit to the credit of said firm in my bank.

Now shewn to me are 19 cheques marked Exhibits 1 to 19 drawn by the Treasury and Audit departments, payable to the said firm of Thomas Kelly & Sons, each and all duly indorsed by and paid to the said Thomas Kelly & Sons by my bank.

The photograph now shewn to me and marked Exhibit 20 is a very good likeness of the said Thomas Kelly. I recognize the photograph as that of the said Thomas Kelly herein referred to.

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Deposition of Norman Woodruff Warren.

NORMAN WOODRUFF WARREN, having been first duly sworn, deposeseth as follows:

I am acting-manager of The Dominion Bridge Company, Limited, in the City of Winnipeg, in the Province of Manitoba, Canada.

The Dominion Bridge Company, Limited, entered into a contract with Thomas Kelly & Sons to supply, paint and load on their wagons at our works, the structural steel grillage required for the south wing and central portion of the new Parliament Buildings in the City of Winnipeg for the sum of \$50 per ton.

Under the said contract the said Dominion Bridge Company, Limited, supplied, painted and loaded on the wagons of Thomas Kelly and Sons at our works 656 tons, 168 pounds, the price of which under the contract was \$32,842, which sum the said Thomas Kelly and Sons have paid to the said Dominion Bridge Company, Limited.

The said steel was delivered to said Thomas Kelly and Sons between the 11th of June, 1914, and the 28th of July, 1914.

STEPHEN CLIFFORD OXTON, being duly sworn, upon his oath, saith:

I am Special Assistant to the present Minister of Public Works of the government of the Province of Manitoba, in the Dominion of Canada. During the months of April and May, 1915, a Royal Commission appointed by the late Manitoba Government to investigate all matters relating to the construction of the new parliament buildings at Winnipeg aforesaid was holding sittings in the court house at the said City of Winnipeg, and Mr. F. H. Phippen acted as counsel for the firm of Thomas Kelly & Sons, contractors, for the erection of the said new parliament buildings. I was present in Court on one occasion during the sittings of the said Royal Commission when the said Phippen on behalf of the said firm of Thomas Kelly & Sons produced invoices for cement from the Canada Cement Company and the Lake Winnipeg Shipping Company to Thomas Kelly & Sons, which he said were all the invoices for all cement used in the caissons of the new parliament buildings. I tabulated all of the said invoices on the afternoon of their production 145½ before the said Commission. My tabulation showed that a total of 23,834 barrels of cement were received by Thomas Kelly & Sons on the said work prior to the 1st day of March, 1914, by which date the said caissons had been completed.

On the basis of one and one-half barrels of cement to each yard of concrete, which Mr. Kelly in his evidence before the Public Accounts Committee of the Manitoba legislature in March, 1915, stated in my presence under oath was the proportion that was used in the caisson construction, there would be 15,890 cubic yards of concrete in the caissons. The total invoices for cement produced contained invoices of 7,732 barrels delivered at the work between May 7th, 1914, and August 3, 1914, which was the last date up to which invoices for cement were produced.

The photograph now shewn to me and marked Exhibit 1 is a very good likeness of the said Thomas Kelly. I recognize the photograph as that of the said Thomas Kelly herein referred to.

J. H. G. RUSSELL, being duly sworn, upon his oath, saith:

I am an architect carrying on business in the City of Winnipeg, in the Province of Manitoba, Canada, and have been so carrying on business for many years. I had excavations made alongside fifteen caissons covering the whole area under the New Parliament Buildings in the said City of Winnipeg from the top of the caissons to rock and found that with the exception of two caissons which had been previously pointed out to me by V. W. Horwood, late Provincial Architect to have been exceptional, the depth to rock under the building area of the New Parliament Building varied from one foot four and a half inches for the area under the south wing and central portion, and seven and a half inches for the area under the north wing. Based upon the investigation which I have conducted I calculated the total cubic yards of material in the caissons under the New Parliament Buildings as 21,327 cubic yards, making a liberal allowance to the contractors in everything. I examined said

caissons and took samples of the material therein. The concrete was not reinforced with the exception of the bell in caisson No. 6. The crushing strength of such samples as could be tested ranged from 466 lbs. to 4,258 lbs. per square inch, showing the concrete to run from very poor to very good. The other samples taken could not be tested, as they ranged from gravel to the poorest sample tested. There was no uniformity in the quantities of the different materials used and some of the material now in the caissons cannot be designated as concrete at all, it consists merely of gravel. By the specifications of the contract of July 16th, 1913, one part of Portland Cement, two parts of sand and four parts of crushed stone were called for, but this has not been adhered to. No crushed stone was found in any of the samples taken from the caissons. In none of the caissons were any lumber or iron rings found, except in the bottom of one and the top of another one. I have also made a valuation of the work done and materials on the site of the said Parliament Buildings and find the total value of the work executed up to the 12th day of May, 1915, is \$777,593.73, aside from the sewer contract, the price of which was \$7,040, and the value of which sewer I find is \$2,598.60. The value of the material on the ground and not used I find to be \$144,704.68. I find the value of the caissons to be, at an outside valuation \$228,198.90, allowing a reasonable profit to the contractor.

WILLIAM SALT, being duly sworn, upon his oath, saith:

I have been a registered architect in the Province of Manitoba, in the Dominion of Canada since 1914, and prior to that time was for about four years working in architect's offices and with building contractors in the City of Winnipeg, in the said Province. I commenced working for Victor H. Horwood, Provincial Architect, in connection with the new parliament buildings being erected by the Manitoba government at the City of Winnipeg aforesaid, during the first week of September, 1913, and was working continuously either in his office or on the building itself until March 12, 1915. About the first week of September, 1913, I commenced working as assistant inspector under the chief inspector W. A. Elliott and provincial architect Horwood on the construction of the caissons for the said parliament buildings, the work on said caissons having commenced about a week before. There were never more than thirty caissons under construction at any one time. As the holes were filled with concrete, the lumber, and iron rings used in each were, as a rule, taken out and used again in the other caissons. Lumber was not required for more than sixty caissons, and there was only one caisson in which it was found necessary to leave all the lumber, because of the condition of the ground. In a very few others it was found necessary to leave a small portion of the lumber for protective purposes. I am satisfied that there could not have been all told more than 100,000 feet of lumber, at a very outside figure, used in the construction of the caissons. I should estimate at a maximum calculation about twenty-two or twenty-three thousand cubic yards of concrete were filled in the

caissons. Not more than forty tons of iron rings were used, and not more than one ton of rings was left in the caissons. There were 369 caissons in all. The concrete filling in the caissons was plain concrete, not reinforced. A few steel cross pieces were put in about four or five caissons. I think \$8.00 per cubic yard would be an ample allowance for the concrete filling put in the said caissons. The reinforcement in the caissons which was omitted would be worth about at least \$4.00 per cubic yard. Thomas Kelly and his sons Lawrence C. Kelly and Charles B. Kelly, all members of the firm of Thomas Kelly & Sons, contractors for the erection of the said parliament buildings, were frequently on the ground looking over the work. The said Thomas Kelly knew that the concrete filled in the said caissons was not reinforced and that the lumber and rings used in the construction of the said caissons was used over and over again in different caissons, as stated above. I saw most of Charles B. Kelly, and I furnished him with the true depths of all the caissons. I helped to measure all the caissons. The deepest was 55 feet, and the depths varied for all of them below that to about 44 feet. One day I chaffed Charles B. Kelly about the prices they were getting for the caisson work, when he said they required it. He explained that their original tender was about \$3,200,000.00, and that they had to come down below the Lyaal tender, which was somewhere about two and three-quarter millions; that his father for several days did not want to take the job, but that Sir Rodmond Roblin, Premier, persuaded him to take it and told him he would see him through. That was his explanation of the high prices for the caisson work. I kept a private record for provincial architect Horwood of the caissons depths in a small black book, which I handed to the said Horwood shortly after the caissons were finished in February, 1914. In March, 1915, during the sitting of the Public Accounts Committee of the legislature Horwood asked me to make a new book. I began to do this and then refused to go on, and Horwood asked me to alter my figures in my original
147 record book so as to make the depths justify the overpayments made to Thomas Kelly & Sons for the caisson work. Horwood and I worked at this one night at his office, and then I decided I would do no more and notified Horwood accordingly. Almost immediately after that he suggested that I should take a holiday for a few weeks, to which I agreed, and he gave me \$300.00, and I left Winnipeg on March 12th. Towards the end of March I was met by one Hook, an employee of the department of the Provincial Architect and by W. A. Elliott, chief inspector on the parliament buildings work. I met these men at Chicago, Illinois, and was asked by Elliott to return to Winnipeg to uphold my altered figures. But Hook had left Winnipeg later and had instructions for me to stay away longer. I received at that time \$600.00 from Elliott and \$300. from Hook, and continued on my holiday. Later I received an additional sum of \$300.00 from the said Hook at the City of Minneapolis, Minnesota. Subsequently, late in April and early in May, 1915, when I was in St. Paul on my return to the said City of Winnipeg, I was interviewed several times by one Hat-

field, representing himself as a lawyer employed by a firm of Conservative lawyers at Winnipeg aforesaid, and he induced me not to go back to Winnipeg at that time. He suggested possible proceedings that would probably be taken against me by the Manitoba government if I returned, and that he was prepared to recompense me for the loss of time, expenses, inconveniences, and other losses which would have to be suffered by me if I did not return to Winnipeg for the period of about twelve months which he mentioned. He finally gave me the sum of \$10,000, less exchange \$200.00, netting me \$9,800.00, this being paid to me as the consideration for my staying away from Winnipeg so that I should not give evidence before the Royal Commission which I understood was then investigating the matters relating to the construction of the new parliament buildings at Winnipeg aforesaid.

The photograph now shewn to be and marked Exhibit 1 is a very good likeness of the said Thomas Kelly. I recognize the photograph as that of the said Thomas Kelly herein referred to.

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Deposition of H. B. Lyall.

H. B. LYALL, having been duly sworn, deposeth as follows:

I am secretary-treasurer and assistant manager of the Manitoba Bridge & Iron Works, Limited, which company had two contracts with Thomas Kelly & Sons for the supplying of steel for use in the erection of the new parliament buildings in the City of Winnipeg in the Province of Manitoba, Canada. One of them is a formal contract dated 16th day of April, 1914, now produced and shewn to me, whereby the Manitoba Bridge & Iron Works agreed to supply Thomas Kelly & Sons all the steel for the north wing of the new parliament buildings for the price of \$67,000. We supplied to said firm 1,198 tons 1,605 pounds of steel, being all the steel called for under the contract between His Majesty King George the Fifth, represented by the Minister of Public Works and Thomas Kelly & Sons bearing date 26th day of March, A. D. 1914, which is now shewn to me. We also supplied the steel above the grillage for the south wing and central portion of the said parliament buildings, exclusive of the dome, under a contract made between myself on behalf of the Manitoba Bridge & Iron Works and Thomas Kelly & Sons, the terms of which are set out in a letter dated July 24th, 1914, from the Manitoba Bridge & Iron Works to Thomas Kelly & Sons, a carbon copy of which from the files of my company is now shewn to me. Under the terms of said contract my company supplied all the steel except the grillage covered by the contracts between His Majesty King George the Fifth, represented by the Honorable Minister of Public Works for the Province of Manitoba, and Thomas Kelly & Sons dated June 20th, 1914, and December 23, 1914. Under said contract we supplied by May 20th, 1915, 1,227 tons of steel, and had then on hand 113 tons of steel of which Thomas Kelly & Sons have not yet taken delivery.

We also did the painting on the steel in the front of above con-

tracts at an additional charge of \$1.50 per ton. Thomas Kelly & Sons took delivery of all of the above material at our works. I have had a large experience in delivering and erecting steel. We estimated the reasonable cost of delivering said steel from our works to said parliament buildings at 60c. per ton, and we would have been prepared to take the contract at that price. We delivered to Thomas

Kelly & Sons under the first contract, in April and May, 148 1914, 386 tons, June 290 tons, July 70 tons, August 322 tons, November 717 tons, April, 1915, 34 tons approximately.

This steel we were prepared to supply and erect at \$70.00 a ton.

In respect of the first contract my company received previous to August 19, 1914, the sum of \$29,578.92 from Thomas Kelly & Sons. The fair and average profit of a constructing firm like Thomas Kelly & Sons in respect of the supplying and erecting of such steel is ten per cent., which would make approximately \$92,312.00 a fair price to the contractor for supplying and erecting the steel in the said north wing. Under the second contract the price of steel was \$53.80 a ton including painting. Sixty cents a ton would cover the cost of delivery from our plant to the parliament buildings. Under that contract we delivered 385 tons in October and November, 1914, 176 tons in December and up to May 20th, 1915, 666 tons, and we then had 113 tons still to deliver, making a total of 1,340 tons under said contract. We would have undertaken to erect this steel for from \$13. to \$15. per ton, which would have been a reasonable and liberal figure to allow. A fair price for supplying and erecting this steel would be between \$67.40 and \$69.40 a ton, allowing a fair profit as above.

The said firm of Thomas Kelly & Sons have now paid my company in full for the whole of the above steel, excepting 30 tons still unfabricated and non-delivered on the second contract.

Deposition of Frederick Fearnley.

FREDERICK FEARNLEY, having been first duly sworn, deposeth as follows:

I have been Assistant and Acting Auditor for the Province of Manitoba for several years. In order to obtain money from His Majesty the King it is necessary that a proper voucher be presented to the Auditor, and in the case of payments in respect to the new Parliament Buildings that a proper voucher be presented to the Auditor for the Province accompanied among other things by the certificate of the Architect, and without these documents payment will not be made.

In respect to each of the payments made to Thomas Kelly and Sons the voucher was accompanied by the certificate of the Architect certifying that Thomas Kelly and Sons were entitled to 148½ the amount of money set out in such certificate and cheques payable to Thomas Kelly and Sons were thereupon issued for the amount set out in each certificate, which cheques had to be signed by the Provincial Treasurer, or his deputy, and by the Auditor or Acting Auditor of the Province.

Now shown to me, marked Exhibits 1 to 19 are cheques issued to Thomas Kelly and Sons in pursuance of such vouchers and certificates and all of the said cheques have been paid to the said Thomas Kelly and Sons out of the moneys belonging to His Majesty the King.

PETER GORDON McTAVISH, being duly sworn, upon oath, saith:

I am Accountant in the Provincial Architect's office in the City of Winnipeg, in the Province of Manitoba, in the Dominion of Canada, and have occupied that position for several years. I was in charge of the applications for payment made by Thomas Kelly & Sons for work done in respect of the new parliament buildings in the said City of Winnipeg. Some of the applications were handed to me by V. W. Horwood, the Provincial Architect. The other applications were handed to me by Lawrence C. Kelly, one of the members of the firm of Thomas Kelly & Sons. These applications were generally accompanied by a letter from the said firm asking for payment for the amount specified in the estimate or application on account of materials supplied and work done in respect of the said new parliament buildings, and asking that the estimate be put through promptly. Most of these were signed by Lawrence C. Kelly on behalf of the firm. Believing in and acting upon the correctness of these applications I made out certificates for signature by the provincial architect certifying that the said firm of Thomas Kelly & Sons were entitled to be paid in respect of said estimates, the amounts set out in said certificates. I did not make out and I would not have made out certificates for signature by the Provincial Architect, until I received from the said firm of Thomas Kelly & Sons applications for payment; and said firm would not have received payments, had they not sent in such applications.

I was in charge of the files containing letters received by the said Provincial Architect's office and I have made a search in the said files and find that a great many letters and other documents

149 are missing therefrom including all of the letters from Thomas Kelly & Sons, enclosing applications for payment, sometimes called "progress estimates," now shewn to me and marked Exhibits 1 to 20, inclusive.

Now shewn to me marked Exhibit 21, is a cut of Thomas Kelly the senior member of said firm of Thomas Kelly & Sons, and I say that the same is a good likeness of the said Thomas Kelly.

VICTOR W. HORWOOD, being duly sworn, upon his oath, saith:

I am an architect by profession and have practiced as such at the City of Winnipeg, in the Province of Manitoba, in the Dominion of Canada, since 1904. From January, 1911, I acted as Assistant Architect of the Government of the said Province of Manitoba, and in October or November, 1911, I was appointed Provincial Architect by the Manitoba Government, and occupied that position until May, 1915. During the year 1912 the Manitoba Government decided to erect new parliament buildings at the City of Winnipeg aforesaid, and plans and specifications drawn by F. W. Simon were adopted.

Tenders were called for by advertisement on May 26, 1913. Prior to that date it had been decided by the Honorable Geo. R. Coldwell, Acting Minister of Public Works in the Manitoba Government, to make changes in the original specifications, such changes being from a piling foundation to caissons, and from reinforced concrete to steel construction. I made no secret of this and I am satisfied that Thomas Kelly was aware that such changes in the original specifications were to be made. Tenders were called for, however, on the original specifications, and the time allowed for the filing of tenders expired at 12 o'clock noon on July 2, 1913. In my opinion this was entirely too short a time for a contract of such magnitude. At least two months' time should have been given. I had nothing to do with the time allowed for the insertions of the advertisement, neither did I have anything to do with the extension of time for one day for filing tenders which was afterwards granted to Thomas Kelly of the firm of Thomas Kelly & Sons, contractors of the said City of Winnipeg. Several days after July 3, 1913, I was handed by the said Coldwell two tenders for the erection of the new parliament buildings, one by Peter Lyall & Sons for \$2,863,000.00, and the other by Thomas Kelly & Sons for \$2,859,750.00. Mr. Coldwell was then Acting Minister of Public Works, and the tenders were handed to me for examination and report after they had been opened. While I was examining the said tenders Thomas Kelly, senior partner of the said firm of Thomas Kelly & Sons, one of the tenderers, came to my house to make some explanations regarding his tender. He noticed Lyall's tender and remarking that there was no cheque attached to it became angry and said, "Coldwell is giving me the double-cross." I recommended the acceptance of the tender of Thomas Kelly & Sons, it being the lowest. I wrote a letter dated July 9, 1913, to Mr. Coldwell recommending changes in the original specifications from piling to caissons and from reinforced concrete to steel construction, and in anticipation of these changes being made I asked for the appointment of a competent firm of engineers familiar with caisson and steel construction, stating that I knew nothing about that class of work. This letter is now shewn to me and marked Exhibit 9. I was later instructed by said Coldwell to destroy this letter, and thought I had done so, but found same in my house after I came back from Rochester, Minnesota this summer.

The contract was made between his Majesty the King and Thomas Kelly & Sons dated July 16, 1913, for the erection of the said new parliament buildings for the sum of \$2,859,750.00. The tender of the said firm contained an item of \$64,050.00 for the piling foundation called for in the original specifications. This sum I have since found would have been quite inadequate to cover the cost of said piling foundation.

The work on the caissons was commenced in August, 1913. I made an estimate of about \$540,000.00 for the cost of the said caissons, which estimate is now shown to me and marked Exhibit 10. Upon shewing this at that time to the Premier of the Manitoba Government, Sir Rodmond P. Roblin, he said, "My God! that means

about \$700,000 underground." My estimate of the cost was based on figures and prices furnished me by the said Thomas Kelly, and was on a basis of reinforced concrete for the filling of the caissons and on the assumption that the lumber and iron rings and bolts used in the construction of the said caissons would be required to be left in each and all of the caissons.

There was no written contract for the construction of the said caissons, but after the work had commenced it was agreed between the said Thomas Kelly and myself that payment for the caissons should be made as follows: \$12.00 per yard for the reinforced
150 concrete for the filling of the caissons; \$7.00 per yard for the excavation; \$40.00 per thousand feet for the lumber used, and 7 cents per pound for the iron rings and bolts.

I am now aware that these are excessive prices and that the filling put in the caissons was ordinary concrete, not reinforced concrete, and also that the lumber and iron rings were used over and over again in different caissons, as these were not constructed all at one time, there never being more than twenty-five or thirty in course of construction at any one time.

Applications for payment for the said caisson work were made by the said Thomas Kelly & Sons for the payments to be made by his Majesty the King in respect of labor and materials alleged to have been done and supplied; all of which applications were delivered to my office at the City of Winnipeg aforesaid, some of them being personally handed to me and the remainder, as I believe, delivered to Mr. P. G. McTavish, an accountant in my office. The said McTavish made out certificates based upon the said applications, and I signed these certificates, now shewn to me and marked Exhibits 1 to 6, on the basis of the applications for payment made by said Thomas Kelly & Sons. In the said applications it was represented that labor and materials had been supplied as follows: Reinforced concrete 35,993 yards; timbering 1,213,000 feet; iron rings and bolts 797.5 tons. I completed these certificates hereinbefore referred to for the Minister of Public Works, and on my certificates orders-in-council were passed upon which there was paid to the said Thomas Kelly & Sons the sum of \$844,037.00, less the amount included in the tender of the said firm for piling, viz: the sum of \$64,050.00, leaving a balance of \$779,987.00 actually paid out to the said firm on the strength of the said representations between November 7, 1913, and June, 1914.

The said firm of Thomas Kelly & Sons was, I believe, composed of the said Thomas Kelly and his sons Lawrence C. Kelly, Robert Emmett Kelly, now deceased, and Charles B. Kelly, all of whom were active partners and fully conversant with all matters relating to the construction of the said parliament buildings. Thomas Kelly was the senior partner of the said firm, and the active business manager and supervisor of its undertakings. The said Thomas Kelly knew that concrete, lumber, and iron rings and bolts to the amount represented in said applications had not been supplied, nor the excavation as alleged made, and that the sum above mentioned \$844,037.00 included large unearned and improper sums paid to the

said firm, and he knew that the applications for payment were based on false and fraudulent representations.

After the construction of the said caissons had been commenced, Dr. R. M. Simpson of the City of Winnipeg, the president of the Conservative Association of that city, the Manitoba government being a Conservative government, came to see me and spoke of what he called campaign funds to be obtained out of the construction of the parliament buildings. I told him that I could only take instructions from the Ministers. He telephoned to the said Coldwell, who asked me to come up and see him. Coldwell said that in making changes in the original contract we should give the contractor a chance to make some money, as there had to be an arrangement made for a campaign fund. He told me that Simpson would handle the fund, and to carry out Simpson's instructions, and that Simpson would settle the amounts. I then saw Simpson and he spoke of adding \$50,000 to the caisson estimates for what he called a campaign fund for the Conservative party, which was then in power, and of which Sir Rodmond Roblin, above mentioned, was leader. After that I paid no attention to the caisson estimates, merely signing what was presented to me in the way of Progress estimates or certificates, such as Exhibits 1 to 6. One day Thomas Kelly said at my office that Dr. Simpson wanted to add another \$100,000.00 to the caissons, in addition to the \$50,000.00 previously mentioned. Kelly was afraid it could not be concealed.

One William Salt was one of the inspectors employed by the Manitoba government upon the said work, and he kept a book recording the actual depths of the said caissons. The Chief Inspector on the work was W. A. Elliott. The last three applications for payment on the caissons were not signed by the said Elliott until sometime during the sitting of the Public Accounts Committee in March, 1915, although the final progress estimate is dated April 10, 1914, and the work was completed on or about that date. In March, 1915, the Public Accounts Committee of the Manitoba Legislature met and began to investigate the payments made to Thomas Kelly & Sons on the parliament buildings contracts. I was examined as a witness before the Committee, and was questioned about the payments for the caissons. I saw at once that the payments could not be justified, having regard to the true depths of

151 the caissons shewn on the books kept by the said William Salt. Coldwell asked me to get Salt to make a new book. Salt started on a new book, and then refused to do any more. Then Coldwell said that I should get Salt to alter his figures in his original book and take a holiday for a few weeks. A number of the figures were altered by Salt, and I gave him \$300 and sent him off for a holiday. The members of the Public Accounts Committee kept asking for the production of Salt as a witness, and Mr. Coldwell asked me to get him to come back to justify and uphold the altered figures, saying that Kelly would have to stand for the necessary expense. Elliott was present, and it was arranged that Elliott should go for Salt. I went to Thomas Kelly's house and there met the said Thomas Kelly, and sent for Elliott, the chief inspector, and it

was agreed there by the said Kelly that the arrangements made the same morning between Coldwell, Elliott and myself should be carried out, viz: for Elliott to go for Salt, and take with him one of the caisson plans with the depths of the caissons marked upon it. Elliott was to endeavor to induce Salt to come back and give evidence on oath before the said Public Accounts Committee upholding the figures as altered. Kelly was very anxious that Salt should do this. Aliases were arranged for Elliott, Salt and myself. We drove in Kelly's motor to my house where I gave Elliott \$500.00, Thomas Kelly having previously loaned Elliott his overcoat to take with him. Elliott left at once for Chicago, Illinois, having ascertained after leaving Coldwell that Salt was in that city. The next day Simpson and I met Coldwell in the latter's office and Simpson insisted that Salt should not come back. Simpson and Kelly and myself arranged to send a young man named Hook to advise Salt not to return, and we arranged for an alias for Hook to use. Simpson gave me a package which he said contained \$600.00, and I gave this to Hook with letters to Elliott and to Salt explaining the change of arrangement. During this time I was very much worried and wanted to clear the whole thing up and take the entire blame myself, but Roblin, Coldwell and Simpson all assured me that everything would come out all right, and that the wives and families of Elliott and myself would be protected in case we should be involved by the overpayments to Kelly. The Legislature prorogued on the 1st day of April, A. D. 1915, the House being assured by Premier Roblin that a Royal Commission would be appointed to investigate the parliament buildings contracts, the Opposition in the House having, I believe, petitioned the Lieutenant Governor to appoint such Commission. On that morning Kelly came over to my office after having been at a meeting of the Cabinet for some time. He was very gloomy, but said the Cabinet was unanimous in seeing the thing through. Elliott was there, and I remarked, "This looks like Stony Mountain." At a later date when I was at Kelly's house and the whole situation was under discussion, Kelly said, "If I go to Stony Mountain all those sons-of-bitches will go with me." Stony Mountain is the name given to the penitentiary situated close to the Village of Stony Mountain, near the City of Winnipeg, in the said Province of Manitoba.

Later I heard that Salt was on his way back, and I sent Hook to Minneapolis, Minnesota, giving him a further sum of \$350.00 to hand to Salt to prolong his holiday. Later upon hearing from Hook that Salt was coming back to Winnipeg to justify himself before the above mentioned Royal Commission, which had been appointed, I went to Coldwell, and he said that Salt should go to Australia for a year. After several consultations with Coldwell he handed me two bundles of bills containing \$10,000.00 with instructions to send Hook to take Salt to San Francisco and buy him a ticket for South America, but not to give him the money until he was on board ship. About four days later Hook returned, stating that he had been robbed of the money. This I reported to Kelly and then to Coldwell, repeating the story in the presence of Cold-

well to the Honorable J. H. Howden, the then Attorney-General for the said Province of Manitoba, in the said government. I left Winnipeg on April 20th to go to Rochester, Minnesota, for Surgical treatment. A few days before that I went over to Kelly's house at his request, in his motor, and Lawrence Kelly, his son, in the presence of the said Thomas Kelly, produced a written document which he read to me, to the effect that I had received a tender for the caisson work dated September 20th, 1913, for the sum of \$844.037.00 on that date, viz: September 20th, 1913, and asked me to sign it. I asked them to let me take the document and write it on my own paper in the morning, but Thomas Kelly insisted upon my signing it then, giving as a reason that if I should happen to die under the surgical operation I expected to undergo, they would have something to show in their defence. The said Thomas Kelly gave evidence on oath before the Public Accounts Committee in March last, confirming my evidence previously given before the

152 same Committee, to the effect that the caisson work had been done on a yardage basis. Afterwards he asked me to go back on all my evidence given before the Committee, and to produce and recognize his letter of September 20, 1913, which letter is now shewn to me and marked Exhibit 11. I asked him how I could go back on about 400 pages of evidence. He said for me to use the excuse that I was ill, and said, "When you are in the witness box after your operation with your head all bandaged up Alf Andrews will make a martyr of you." The "Alf Andrews" referred to by him was acting as solicitor for the late Manitoba Government before the Royal Commission. Before leaving Winnipeg on April 20th, 1915, I told Kelly that I intended to resign, but he advised me not to be hasty as that would be equivalent to confessing guilt.

Simpson repaid me \$1,000.00 on account of the money that I paid in keeping Salt away from Winnipeg. The said firm of Thomas Kelly & Sons also had contracts in respect of the steel work for the north wing and the steel work for the south wing of said parliament buildings, bearing date March 26, 1914, and June 20, 1914, respectively. Applications for payment for work done and materials supplied in connection with the said contracts were made by the said firm, and on the basis of the said applications certificates were signed by me for the amount of work and material claimed for by said applications, which work had not been done and which material had not been erected as represented.

Now shewn to me and marked Exhibit 7 are a series of twenty applications for payment made by the said firm of Thomas Kelly & Sons in connection with the work done on the said parliament buildings, including the six applications for payment made on the caisson work, and the various applications made in respect of the said steel contracts. The said steel contracts were in addition to the original contract, and no deductions were made from same for any work included in respect of same in the original contract.

Dr. W. H. Montague was made Minister of Public Works in November, 1913. I had difficulty at first in getting estimates through

his department, as he scrutinized the papers very carefully. I complained to Kelly, Coldwell, and Simpson, and one morning Simpson had an interview with Montague at the latter's office in the parliament buildings, and when he came out advised me that everything had been explained and that things would go all right from that time on. Montague afterwards told me that Simpson had discussed matters with him. I had no more trouble with Dr. Montague in getting my estimates through, after his interview with Simpson. Dr. Montague afterwards asked my advice as to Consulting Engineers so as to protect ourselves in every possible way. I mentioned Professor Brydone-Jack, and he mentioned E. C. Shankland of Chicago. Both of these men were afterwards employed by the government. Shankland came to Winnipeg from Chicago in January, 1914, and was taken to Montague's office by Kelly in his car. Shankland also visited the City of Winnipeg in the fall of 1914. The purpose of employing Shankland and Brydone-Jack was to justify the extra contracts made with Thomas Kelly & Sons. My estimates in respect of the steel contracts were determined in each case by the said Thomas Kelly and the said Dr. Simpson.

In connection with the contract for the grillage on the south wing I could not make up the price which I was asked to put in as an estimate for the contract without it looking too ridiculous, and I could not see how to do it. Kelly told me to add on \$64,000.00 and put it in as additional concrete work, which of course was not bona fide. I said to Kelly, "How can I ever protect it?" And he said, "They will never bring it up." When I was before the Public Accounts Committee last March I thought that amount would be questioned, and I went to Kelly's house and said to him, "What am I going to do; I cannot protect that?" and he said, "Bluff it." This contract could not be justified at all, and later on the suggestion of Dr. Montague it was arranged that a different set of plans should be substituted so as to make the contract include the steel superstructure up to the roof, and not the grillage alone.

In regard to the steel for the dome I attended at Premier Roblin's office shortly before the provincial election which was held in July, 1914. When I entered his office I was immediately followed by the said Thomas Kelly, who on being stopped by the Premier's secretary, said, "Oh, I know what the Premier wants with Horwood; I am here on the same business." He came in, and Roblin, Kelly and I discussed the matter of a contract for the dome's steel. I told them that I had no plans or specifications. Roblin said to get out an estimate as he wanted to arrange about the contract right away. This work could not have been done for about two years from that time. Roblin told me to be very careful as the contract might be

153 up under investigation by a Royal Commission years afterwards. I made out an estimate of \$812,000.00, first addressed to Roblin, but later at his request addressed it to Dr. Montague. I subsequently was asked by Montague to destroy everything I had relating to this contract. Afterwards Montague said that they would have to make up to Kelly in some way for the loss of this contract, and he suggested that Kelly and I should

go to Chicago and arrange with the said Shankland for a double set of plans, a heavy set to be made part of the contract so as to justify the price, and the other a lighter set to be used on the work. Kelly and I went to Chicago in December, 1914, and made this arrangement with Shankland. Shankland agreed to do so for 5 per cent. of the price according to the loaded plan, and put in a bill on account for \$15,000, which was afterwards paid although no plans had been submitted or delivered. At Montague's request I prepared a private estimate of the work, in January, 1915, still to be done on the parliament buildings, which included a sum of \$800,000.00 for the dome and contingencies. This amount was put in at the suggestion of Dr. Montague himself, and I afterwards advised Roblin to that effect when he inquired if I had arranged the estimate with Dr. Montague.

In regard to the \$500 which I gave Elliott in connection with Salt, previously referred to, Kelly said to me at his house on that occasion, "You put up the money Horwood; you can get it back from the Government easier than I can."

All of the steel contracts were padded at the request of Simpson and Kelly. The campaign fund was in every case one of the considerations in the making up of the estimates, the figures being settled by Simpson and Kelly. In the estimate for the south wing, for example, he included an item of 20 per cent. for rivets in order to help make up the amount which had been agreed upon. It was in connection with this contract that Dr. Montague afterwards told me that it was absolutely impossible to justify it, and that he had been talking to Kelly, and Kelly had suggested that more steel should be added on the plans forming part of the contract. This was the reason why the plans were changed, and new plans showing steel to be constructed up to the roof substituted for the plans originally forming part of the contract. Simpson on one occasion mentioned that Montague and Roblin stated that they would arrange a fund of \$25,000.00 to protect Elliott's family and mine. Coldwell also told me that they might have to prosecute Elliott and myself, but that everything was in their hands, they having 153½ the attorney general at Winnipeg and also the Minister of Justice at Ottawa, so that we need not worry. On one occasion Mr. Kelly and C. H. Forrester and myself were in the Rex Hotel, and Kelly offered to give me an electric automobile, which I refused to accept.

There was never any intention on my part as architect to make any deductions in respect of the additional contracts when the final estimates were being put through on the original contracts. Had I done so, the deductions might in some cases have amounted to more than the extra payments made. In one of my letters written in December, 1913, I mentioned that certain deductions should be made. This letter I was afterwards asked by Dr. Montague to destroy and rewrite, so that no mention would be made of deductions.

Undoubtedly the said Thomas Kelly knowingly and fraudulently obtained for the said firm of Thomas Kelly & Sons in connection

with the construction of the said parliament buildings very large sums of money to which the said firm was not entitled.

The photograph now shewn to me and marked Exhibit 8 is a very good likeness of the said Thomas Kelly. I recognize the photograph as that of the said Thomas Kelly herein referred to.

HARRY FRANK WILSON, being duly sworn, upon his oath saith:

I have been an employe of the Department of Public Works for the Province of Manitoba for some years. Part of my duties has been to record all contracts made in the name of His Majesty the King and to keep charge of the same.

I remember a contract between Thomas Kelly & Sons and His Majesty King George the Fifth for \$802,650.00, signed by some member of the Manitoba Government, and by Thomas Kelly & Sons. I was away from my office during the first part of July and I first saw this contract on my return about the middle of July. I took it to the Deputy Minister of Public Works, Mr. C. H. Dancer, to ascertain the authority on which the same had been made and he told me that it had been made upon an order-in-council. Afterwards Mr. Dancer came to me and asked me for the Contract, which I thereupon handed to him. Since then I have never seen the contract.

154 ERNEST EDMUND BRYDONE-JACK, being duly sworn, upon his oath saith:

I am a structural engineer, and was consulted by the Honorable Dr. Montague, Minister of Public Works for the Province of Manitoba, in reference to the change from reinforced concrete construction to steel construction in the north wing of the new parliament buildings in the City of Winnipeg, in said province, and for an estimate upon the cost thereof. Now shown to me, marked Exhibit 1, is the report which I sent to said Dr. Montague in response to his request. In this estimate the price of steel is put at five and three-quarters cents. In adopting this price, I did not make any inquiries from the companies who fabricate and supply such steel; I accepted the cost figures which I saw in a copy of Mr. Horwood's estimate. In the month of September, 1914, I received from Mr. Horwood a copy of a letter from Mr. Horwood to the said Honorable W. H. Montague, Minister of Public Works in connection with the steel work in the south wing and central portion and dome of the said new parliament buildings amounting to \$812,000, a copy of which is now shown to me and marked Exhibit 2. I did not check this estimate as I did not receive sufficient data. I had not been asked to report on it. At the end of September, 1914, E. C. Shankland, of Chicago, structural engineer, came to Winnipeg at the request of said Dr. Montague and I believe consulted with said Dr. Montague and Mr. Horwood, the provincial architect. I saw Mr. Shankland when he was here at that time. Mr. Shankland told me he was unable to justify the estimate of \$812,000. I subsequently received from Mr. Shankland the letter now shown to me, dated October 6, 1914, in which he says: "I got a telegram from Dr. Montague asking me to rush report. Also

I would be glad to get a line from you as to what you are going to report." I received a subsequent letter from Mr. Shankland, dated October 12th, 1914, now shown to me and marked Exhibit 3, and I subsequently received a wire from Mr. Shankland asking me to meet him when he came to Winnipeg, and I saw him when he was here on or about October 17th, 1914. Mr. Shankland and myself estimated the steel in the said south wing and central portion exclusive of the dome at about 2,100 tons. Mr. Shankland told me that he could not justify the estimate of \$812,000 for the south wing, central portion and dome. Mr. Shankland, so far as I am 154½ aware, did not make a written report in reference to this matter until December 19, 1914, when he made an estimate of 2097 tons for the steel work in the said south wing and central portion exclusive of the dome. On December 22nd, 1914, I made a written report to Dr. Montague, estimating 2192 tons. On November 17, 1914, Mr. Shankland wrote to me asking me how I was getting along with my report and whether I had sent it in yet. On the 19th I replied to him, saying: "There seems to be no special rush for my report. Under the circumstances I have delayed making it until I can size up the situation a little better. But, I am ready, however, to hand it in almost any day if required." I think Mr. Shankland when in Winnipeg in October, 1914, told me that he had been commissioned to draw the plans for the dome. Mr. Horwood told me that Shankland was not to send in the plans for the dome until after the session of the legislature, which took place in February and March last. About April 21st, 1915, I received a letter from Mr. Shankland dated April 19th, 1915, now shewn to me marked Exhibit 4, in which he said that he had met the said Dr. Montague by appointment in St. Paul the day before, and by chance, had also met Judge Phippen, who was Mr. Kelly's legal adviser, and that the judge came to Chicago with him the preceding night; that Dr. Montague had told him that the Royal Commission would be appointed at once and would probably have Shankland and myself testify in about two weeks, so that there was no time to lose, and as he could not write Kelly for information, he asked me to get it for him. He then asked me to get all the information I could about the cost of steel in Winnipeg and also the cost of cement, sand and broken stone; also the cost of rubble masonry compared with brick laid in cement mortar, and make other inquiries in reference to the cost of work done on the new parliament buildings. On April 24th I wrote him giving him part of the information asked for. Mr. Horwood, in or about January last, took from my files the copy which I had of his letter giving the estimate of \$812,000 above referred to and other letters from Mr. Shankland to me, above referred to.

MALCOLM MACLEAN being duly sworn, upon his oath saith:

I am the Clerk of the Executive Council of the Province of Manitoba. It is my duty, or the duty of my deputy or my assistant to write out, file, and record all orders-in-council passed in the province of Manitoba. Such orders in council are passed on the written recommendation of some minister of the Crown,

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and this recommendation is always attached to the order-in-council. The orders-in-council are numbered consecutively, and are indexed by card indexes.

I was not performing those duties in my office during the first half of July, 1914. After the change of government in May I was shown the book of the Public Works Department in which copies of orders-in-council were kept and shewn a page from which apparently something had been torn or pulled off, and was asked what order-in-council copy should be on said page. I made a search of my vault and office for the order-in-council and found that order-in-council No. 23,147, was missing. I was then instructed to go to the Provincial Secretary's Department and secure their copy. I proceeded in said department and asked a clerk for their copy, and it was found to be missing from their files. I then proceeded to the department of the provincial auditor where I secured a certified copy of order-in-council No. 23,147, which authorized the Minister of Public Works to enter into a contract with Thomas Kelly & Sons for steel work in the south wing and central portion and dome of the new parliament buildings in the City of Winnipeg for \$802,650.00.

An index of orders-in-council is kept with cards. I searched this card index and found a number of cards. They covered orders-in-council before and after order-in-council No. 23147, but order-in-council No. 23147 was not entered on any of the cards there, and there was no card covering said order-in-council No. 23,147.

It is the practice to send certified copies of an order-in-council such as this one, to the Lieutenant Governor, to the office of the Provincial Auditor, the Departments of Public Works, and of the Provincial Secretary. I think it was sometime in the fall of 1914 that I was summoned by Sir Rodmond Roblin into his office. The Hon. Dr. Montague, Minister of Public Works, was there at the time. I was then instructed to go over to the Lieutenant Governor and get from him his copy of the order-in-council in question. I went over to the Government House and got the Lieutenant Governor's copy which was given to me by the Lieutenant Governor or his Aide de Camp, Count De Bury, and I brought it over, and left it with Sir Rodmond Roblin and the Hon. Dr. Montague in the Premier's office in the parliament buildings, and never saw the same again.

155½ PAUL SCHIOLER, being duly sworn, upon his oath, saith:

I am a civil engineer. I have had experience in structural steel and reinforced concrete work. I was Assistant Engineer with the city of Winnipeg for some years and had charge of the structural steel and reinforced concrete work. I have examined the contracts bearing date July 16, 1913, March 26, June 20th, and December 23, 1914, between his Majesty King George the Fifth and Thomas Kelly & Sons, and the specifications and plans therein referred to of the new parliament buildings in the city of Winnipeg, Province of Manitoba, Canada. I find that the value of the original foundation consisting of piling and caissons under the dome as required by the original contract dated July 16, 1913, and as shown on the

original plans is \$196,154.32; that the value of a conservatively but properly designed caisson foundation is \$149,730.00; that the value of the reinforced concrete floors, beams and columns under the said original contract is \$217,195, that the value of the substituted floors, beams and columns, inclusive of structural steel necessary for changes from reinforced concrete framing to structural steel framing is \$249,127.00; that the caisson plans for the new parliament buildings prepared in the office of the provincial architect shows more than twice the bearing surface area required by conservative design to carry this building; that the grillage plan prepared in the office of the Provincial Architect shows about 1,000 tons of grillage, and that there is practically no grillage required for this building; that the steel plans prepared in the office of the provincial architect show about 350 tons of waste steel, as columns and beams, built in heavy brick walls; that the change from piles to caissons should have been made as a saving to the Province of \$46,424.32, and that the change from reinforced concrete floors, columns and beams to structural steel framing should not have been made, but if made, the cost of the change for the whole of the building, exclusive of the dome, should not have exceeded \$31,932.00. In making both changes there should have been a deduction of \$14,492.32 in the amount payable by his Majesty the King to the said contractors Thomas Kelly & Sons under the original contract for the construction of said parliament buildings dated July 16, 1913. The subsequent contracts for \$230,100 for the north wing, for \$215,000 and for \$52,000.00 for the south wing and central portion exclusive of the dome, and the payments for the caissons and said work under said contract 156 just mentioned should never have been made, but, instead, as I have already stated, the said Thomas Kelly & Sons should have paid to his Majesty the King, \$14,492.32, or have deducted this sum from the original contract price. The said subsequent contracts provide for steel framing throughout, with all columns and beams encased in concrete. A large quantity of cement is required for this construction.

HENRY ALEXANDER BOWMAN, being duly sworn, upon his oath saith:

I am Assistant Deputy Minister of Public Works for the Province of Manitoba, which position I have occupied for some years. I remember a tender being received at the office of the Public Works Department about the day specified in the advertisement for tenders for the new parliament buildings in the city of Winnipeg, viz: twelve o'clock noon on the 2nd day of July. On the day I received the tender in consequence of a message which I received I took the tender to the office of the Premier, Sir Rodmond Roblin, and left it there. Sir Rodmond was in the office at the time.

Ex. 7. Deposition G. H. Dancer. Oct. 11/15.

Ex. 20. Deposition of J. B. Priestman. Oct. 12/15.

Ex. 1. S. C. Oxtan deposition. Oct. 12/15.

Ex. 1. Deposition Wm. Salt. Oct. 11/1915.

Ex. 21. Deposition P. G. McTavish. Oct. 12/1915.

Exhibit 8. Deposition of V. W. Horwood. Oct. 11/1915.
Exhibit 1. Deposition of L. Villeroy. Oct. 11th, 1915.

(Cut of Mr. Thomas Kelly.)

HUGH J. MACDONALD, P. M.

156½

1914-15.

WINNIPEG, December 8, 1914.

No. 672.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$76,875.00 Seventy six thousand eight hundred and seventy five and no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 1.
Deposition of J. B. Priestman.
Deposition of F. Fearnley.
Hugh J. Macdonald, P. M.

WINNIPEG, Nov. 29, 1913.

No. 34897.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$145,847.25 One hundred and forty-five thousand, eight hundred and forty seven 25/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLMEY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 2.
Deposition of J. B. Priestman.
Deposition of F. Fearnley.
Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, October 29, 1914.

No. 44066.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$51,850.00. Fifty one thousand, eight hundred and fifty 00/100 Dollars.

To the Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. H. HIAM,
Provincial Auditor.

Exhibit 3.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

WINNIPEG, June 23, 1914.

No. 22735.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$62,555.55 Sixty two thousand five hundred and fifty five and 55/100.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 4.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

WINNIPEG, January 9, 1914.

No. 4299.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$121,874.70 One hundred and twenty one thousand eight hundred and seventy-four 70/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 5.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

WINNIPEG, April 24, 1914.

No. 16243.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$156,516.45 One hundred and fifty six thousand five hundred and sixteen 45/100.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 6.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

158

WINNIPEG, April 21, 1914.

No. 15813.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$165,886.00 One hundred and sixty five thousand eight hundred and eighty six no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

HUGH ARMSTRONG,
Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 7.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, June 13, 1914.

No. 21039.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$80,750.00 Eighty thousand seven hundred and fifty and no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 8.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

WINNIPEG, October 9, 1913.

No. 30093.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$20,084.65 Twenty thousand and eighty four 65/100.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 9.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

WINNIPEG, August 30, 1913.

No. 25480.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$35,700.00 Thirty five thousand seven hundred and no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 10.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

159

WINNIPEG, December 19, 1913.

No. 2380.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$7,040.00 Seven thousand and forty and no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 11.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, March 26, 1914.

No. 13679.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$2,259.00 Twenty-two hundred and fifty-nine and no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,

Deputy Provincial Treasurer.

F. FEARNLEY,

Provincial Auditor.

Exhibit 12.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, June 23, 1914.

No. 22756.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$131,750.00 One hundred and thirty one thousand seven hundred and fifty no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,

Deputy Provincial Treasurer.

F. FEARNLEY,

Provincial Auditor.

Exhibit 13.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, July 9, 1914.

No. 27439.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$157,250.00 One hundred and fifty seven thousand two hundred and fifty no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,

Deputy Provincial Treasurer.

F. FEARNLEY,

Provincial Auditor.

Exhibit 14.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

160

1913-14.

WINNIPEG, June 4, 1914.

No. 19985.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$42,500.00 Forty-two thousand, five hundred no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

HUGH ARMSTRONG,
Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 15.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, July 9, 1914.

No. 27440.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$85,000.000 Eighty five thousand and no/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 16.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, March 9, 1914.

No. 12019.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$127,307.05 One hundred and twenty seven thousand three hundred and seven 05/100 Dollars.

To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 17.

Deposition of J. B. Priestman.

Deposition of F. Fearnley.

Hugh J. Macdonald, P. M.

1913-14.

WINNIPEG, Sept. 24, 1914.

No. 42044.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$107,950.00 One hundred and seven thousand nine hundred and fifty 00/100 Dollars.
To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

F. FEARNLEY,
Provincial Auditor.

Exhibit 18.
Deposition of J. B. Priestman.
Deposition of F. Fearnley.
Hugh J. Macdonald, P. M.

161

1913-14.

WINNIPEG, October 9, 1914.

No. 42861.

Province of Manitoba.

Pay to the order of Thomas Kelly & Sons \$85,246.50 Eighty-five thousand, two hundred and forty six 50/100 Dollars.
To The Union Bank of Canada, Winnipeg.

W. J. PTOLEMY,
Deputy Provincial Treasurer.

Countersigned.
F. FEARNLEY,
Provincial Auditor.

Exhibit 19.
Deposition of J. B. Priestman.
Deposition of F. Fearnley.
Hugh J. Macdonald, P. M.

16½ *Copy of a Report of a Committee of the Executive Council
Approved by His Honour the Lieutenant-Governor on 4th
July, 1914.*

(No. 23147.)

On the recommendation of the Honourable the Minister of Public Works,
Committee advise.

That the tender of Messrs. Thos. Kelly & Sons amounting to Eight hundred and two thousand, six hundred and fifty dollars (\$802,650.00) for the Structural Steel for the South Wing, Central Portion, and Dome of the New Parliament Buildings, and suspended ceilings throughout the whole of the buildings according to the plans and specifications prepared by the Provincial Architect, be accepted, and that the undersigned be authorized to enter into and

execute a contract with the said Messrs. Thomas Kelly & Sons, on behalf of the Province of Manitoba.

Certified,
(Sgd.)

GEO. WINTERS,
Acting Clerk, Executive Council.

Winnipeg, Manitoba, 4th July, 1914.

(The Honourable Sir Rodmond Roblin, K. C. M. G., in the Chair.)

Ex. 1.

Deposition of George Winters.

Hugh J. MacDonald, P. M.

Thos. Kelly & Sons,
General Contractors and Brick Manufacturers.

WINNIPEG, CANADA, Sept. 20, 1913.

Mr. V. W. Horwood, Provincial Architect, City.

DEAR SIR: We hereby propose to furnish all labor and materials required for the construction of the Caisson Foundation for the New Parliament Building, Winnipeg, according to plans and specifications prepared therefor by you, and to your entire satisfaction, for the sum of Eight hundred & forty-four thousand, & thirty-seven dollars (\$844,037.00). From this tender there is to be deducted the sum of \$64,050.00 which amount was included in our Contract for the Concrete Piles which were originally shown and specified for the Foundations. This makes our net price for the Caisson Foundation the sum of Seven hundred & Seventy-nine thousand, nine hundred & eighty-seven dollars (\$779,987.00).

Yours truly,

THOS. KELLY & SONS,
Per THOS. KELLY.

EXHIBIT 11.

Deposition V. W. Horwood, Oct. 11, 1915.

Office of the Provincial Architect.

261 FORT STREET,
WINNIPEG, July 9th, 1913.

The Hon. G. R. Coldwell, Acting Minister of Public Works, Parliament Buildings, City.

SIR: I have the honor to submit the following report in the construction of the Proposed New Parliament Buildings at Winnipeg.

1st. Caissons should be substituted instead of piling as at present shown on plans. Driven piles as shown on plans are not successful in our soil. I have examined several large buildings being erected in Winnipeg at the present time and find that in every instance Caisson Construction is being used. An instance of Pile failure is shown at the Royal Alexandria Hotel where a new addition is being built and Caisson Construction used as the old foundation of Piles cannot be depended upon. The new Fort Garry Hotel is erected upon Caissons also, The New Post Office and a great many other

buildings. With the Caisson Construction the foundation is visible and no chances of any sort are taken, also Caisson Construction can be carried on all winter. The disadvantages are extra cost, and if water is met with in any quantity, but so far in Winnipeg this water difficulty has not been met.

2nd. The plan of reinforced concrete construction should be changed into steel with the exception of the floors. The advantages of steel over concrete are many. The ease of erecting in all weathers, work being carried on all winter.

Its stability, the government taking no chances in its erection.

Its compactness, still, however, is more expensive, but the advantages over the concrete construction overbalance this extra cost.

I would suggest that the Prime costs, with the exception of Hardware be eliminated from the cost. The large Prime costs are viz:—

Exhibit 9. Deposition of V. W. Horwood. Oct. 11, 1915.

Library Furnishings	\$30,000.00
Portland Stone	200,000.00
Foreign Marble	40,000.00
Sculpture	100,000.00
Bronze Work	70,000.00

In the case of Sculpture, competition amongst Canadian *Sculptures* could be asked. Also the stone being *carried* in Great Britain the difficulties of hoisting into place without damage is very great. This work could be done in Canada. There are many smaller amounts which could be adjusted. I would also recommend that the plastering of the building be done in Gypcement as this is a product of Manitoba and is the only plaster which will adhere to the Gypsum blocks specified for the partitions. If changes are made to Caisson and steel construction, a competent firm of Engineers who are familiar with this class of work should be asked to make these steel drawings. This will not delay the building as the Caissons can be gone on with at once.

I have the honor to be, Sir,

Your obedient Servant,
(Sgd.)

V. W. HORWOOD,
Provincial Architect.

163 *Memo. on Caisson on New Parliament Buildings.*

Ex. 10. Deposition V. W. Horwood, Oct. 11/1915. Hugh J. MacDonald, P. M.

There are 468 caissons of 6' 0" diameter with a depth of 46' 0".

The area of caisson is 28.27 square feet.

There are 1.047 cu. yards per lineal foot.

1.047 x 46' 0" in depth, plus the enlargement of Bell at bottom 6.33 yards, 54½ cu. y'ds @ \$12.00, including reinforcement, makes price of concrete for one caisson 6' 0" x 46' 0"..... \$650.00

or price per cu. yard of concrete including reinforcement \$12.00.

The excavation is the same, 54½ cu. y'ds.

The price is \$7.00 per cubic yard. 381.50

This price includes going through 7' 0" of practically rock, and also 5' 0" thickness of boulders.

(See report of Deputy Minister of Public Works, and myself, dated Sept. 17th, 1913.)

Two (2) men picking @ 35c. per hour of a 10 hour day, take out $\frac{1}{2}$ cu. yard, making a cost of excavating through this 7' 0" of hard pan.

Two (2) men, 10 h'rs day @ 35c. per hour is \$7.00 for $\frac{1}{2}$ cu. y'd.

1 yard \$14.00 for hard pan.

7' 0" deep x 1.047 yards, in 1 foot deep is 7.329 cu. y'ds of hard pan in each caisson @ \$14.00, plus one Helper @ \$2.50 per day is \$19.00 per cu. yard of hard pan.

The cost of excavating hard pan in one caisson is \$19.00 x 7.329, \$120.92.

This leaves a balance of \$254.08 to excavate 34 feet of hard clay and 5 feet of boulders.

Two (2) men and helper remove 1 cu. yard of boulders per day, \$9.50 per yard of boulders 5' 0" deep x 1.047 cu. yards per lineal foot is 5.325 cu. yards of boulders to be excavated at \$9.50 per yard. \$50.58

Leaving \$191.18 to excavate 34 feet or 35.598 cu. y'ds and 6.33 cu. y'ds in bell at bottom is 41.85 cu. y'ds giving Contractor \$4.56 per cu. yard for clay digging, and when depth is considered this is very reasonable. The average of \$7.00 per cu. yard is made up as follows:

7.329 cu. y'ds hard pan @ \$19.00.	139.24
5.235 cu. y'ds Boulders @ \$9.50.	50.58
41.85 cu. y'ds earth @ \$4.56.	191.18

54.504 cu. yards cost \$381.00

Average cost per cubic yard, \$7.00.

Lumber:

There is 1,840 feet of lumber in each caisson @ \$40.00 per M. \$73.60

In some instances the lumber must be left in caisson on account of earth falling in, many Contractors leave caisson timber in, but when possible, I have same removed to allow junction on the earth with concrete increasing the efficiency of the caisson.

Iron Rings:

There are 22 rings of 20 feet in length @ $5\frac{1}{2}$ lbs. per foot=440 feet=2420 lbs. @ 4c. \$169.40

The ring cost 6c. per lb. and the additional 1c. is incurred in setting rings are of all sizes in girth, and in many cases cannot be reused.

Recapitulation.

Total cost of one caisson 6' 0" x 46' 0" deep.....	\$1,278.50
Cost per foot, \$27.80.	
Cost of 468 caissons @ \$1,278.50.....	598,338.00
Less concrete piles	64,050.00
Total estimate	\$534,288.00

164

Caissons for Union Trust Building.

No hard pan was encountered in excavations for caissons for this building.

Cost of excavating for caissons per lineal foot of depth was \$6.75.

Cost of concreting per cubic yard was \$11.00.

The diameter of caissons was 4' 0" and the average depth was 50' 0".

The cost of excavating one caisson was 50 x 6.75..... \$338.50

Total number of cubic yards in one caisson equals 23.26.

Total cost of concrete for one caisson is 11 x 23.26..... \$255.86

Cost of excavating

Cost of Concrete..... \$338.50

Total cost of one caisson..... \$594.36

Office of the Provincial Architect.

WINNIPEG, April 22nd, 1914.

No. 2010.

Progress

Estimate No. 5.

\$156,516.45.

Building New Parliament Buildings at Winnipeg.

To the Hon. the Minister of Public Works:

I hereby certify that Thos. Kelly & Sons of Winnipeg are entitled to a payment of One hundred and fifty-six thousand five hundred and sixteen 45/x Dollars (\$156,516.45).

(Sgd.)

V. W. HORWOOD,
Provincial Architect.

Exhibit 1.

Deposition of V. W. Horwood.

Oct. 11, 1915.

Hugh J. Mac Donald, P. M.

Office of the Provincial Architect.

WINNIPEG, April 15th, 1914.

No. 2009.

Progress

Estimate No. 4.

\$165,886.00.

Building New Parliament Bdgs. at Winnipeg.

To the Hon. the Minister of Public Works:

I hereby certify that Messrs. Thos. Kelly & Sons of Winnipeg are

entitled to a payment of One Hundred and sixty-five thousand eight hundred and eighty-six 00/100. Dollars (\$165,886.00).

(Sgd.)

V. W. HORWOOD,

Provincial Architect.

Exhibit 2.

Deposition of V. W. Horwood.

Oct. 11/15.

Hugh J. Mac Donald, P. M.

O. K.

W. H. M.

Office of the Provincial Architect.

WINNIPEG, June 16th, 1914.

No. 2013.

Progress

Estimate No. 6.

\$62,555.55.

Building New Parliament Buildings at Winnipeg.

To the Hon. the Minister of Public Works:

I hereby certify that Mess. Thos. Kelly & Sons of Winnipeg are entitled to a payment of Sixty-two thousand five hundred and fifty-five 55/100 Dollars (\$62,555.55).

(Sgd.)

V. W. HORWOOD,

Provincial Architect.

Exhibit 3.

Deposition of V. W. Horwood.

Oct. 11, 1915.

Hugh J. Macdonald, P. M.

165

Office of the Provincial Architect.

WINNIPEG, March 4th, 1914.

No. 2008.

Progress

Estimate No. 3.

\$127,307.05.

Building Parliament Buildings at Winnipeg.

To the Hon. the Minister of Public Works:

I hereby certify that Mess. Thos. Kelly & Sons, of Winnipeg are entitled to a payment of One hundred and twenty-seven thousand three hundred and seven 05/xxx Dollars (\$127,307.05).

(Sgd.)

V. W. HORWOOD,

Provincial Architect.

Exhibit 4.

Deposition of V. W. Horwood.

Oct. 11, 1915.

Hugh J. Macdonald, P. M.

O. K.

W. H. M.

Office of the Provincial Architect.

WINNIPEG, Nov. 19th, 1913.

No. 2002.

Progress

Estimate No. 1.

\$145,847.25.

Building Parliament Buildings at Winnipeg.

To the Hon. the Minister of Public Works:

I hereby certify that Mess. Thos. Kelly & Sons of Winnipeg are entitled to a payment of One hundred and forty-five thousand eight hundred and forty-seven 25/100 Dollars (\$145,847.25).

Concrete Caisson Foundations.

(Sgd.)

V. W. HORWOOD,
Provincial Architect.

Exhibit 5.

Deposition of V. W. Horwood.

Oct. 11, 1915.

Hugh J. Macdonald, P. M.

Office of the Provincial Architect.

WINNIPEG, Dec. 16th, 1913.

No. 2004.

Progress

Estimate No. 2.

\$121,874.70.

Building New Parliament Bdgs. at Winnipeg.

To the Hon. the Minister of Public Works:

I hereby certify that Mess. Thos. Kelly & Sons of Winnipeg are entitled to a payment of One hundred & twenty-one thousand Eight hundred & Seventy-four 70/100 Dollars (\$121,874.70).

(Sgd.)

V. W. HORWOOD,
Provincial Architect.

Ex. 6.

Deposition of V. W. Horwood.

Oct. 11, '15.

Hugh J. Macdonald, P. M.

EXHIBIT 1.
Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.
APPLICATION FOR PAYMENT.

Progress Estimate No. 1. Name of Building: New Parliament Building, at Winnipeg, Man.
To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$35,700.00 made up as per detailed statement below for work done to this date applying against contract dated July 16, 1913. Certificate 1317, issued Aug. 26, 1913.

August 22d, 1913

Thomas Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$15,959.50	\$ 57,959.50	Excavators Works, Drains, Etc.	\$42,000.00		\$42,000.00
2		169,746.50	Concrete Footings & Foundations Walls, Etc.			
2		54,805.00	Stone Masons' Work.			
3		229,040.00	Re-inforced Concrete Work.			
4		995,465.00	Cut Stone Work, Carving, Etc.			
5		336,452.00	Brickwork (Common Brick)			
5		35,624.00	Hollow Tile Partitions, Floors, Etc.			
6		277,612.40	Carpenter & Joiner Work.			
6		20,000.00	Hardware.			
7		41,500.00	Structural Steel Work.			
7		180,754.00	Ornamental Iron & Metal Work.			
8		29,990.00	Tinsmiths' & Sheet Metal Work.			
9		103,377.00	Plasterers' Work.			
11		219,007.00	Marble & Tile Work.			
12		42,000.00	Painting.			
12		64,650.00	Concrete Piles.			
14		2,177.00	Plumbing.			
			Totals.	\$42,000.00		\$42,000.00
			Less 15%	6,300.00		6,300.00
				\$35,700.00		\$35,700.00
			Amount of this Estimate.	\$35,700.00		\$35,700.00

Certified Correct,
"W. A. Elliott,"

Inspector.

EXHIBIT 2.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 2.

Building: New Parliament Building at Winnipeg, Man.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for payment of \$20,084.65 for work done to date as per this detailed statement. Date of contract, July 16, 1913. Certificate No. 1378, issued Oct. 6, 1913.

September 27th, 1913

Thos. Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$ 10,959.50	\$ 57,959.50	Excavators Works, Drains, Etc.	\$47,000.00	\$42,000.00	\$ 5,000.00
2		169,746.50	Concrete Footings & Foundations Walls, Etc.			
3		54,895.00	Stone Masons' Work			
4		229,040.60	Reinforced Concrete Work			
5		985,465.00	Cut Stone Work, Carving, Etc.			
6	317,823.00	336,452.00	Brickwork (Common Brick)	18,629.00		18,629.00
7		35,634.00	Hollow Tile Partitions, Floors, Etc.			
8		277,612.40	Carpenters and Joiner Work			
9		20,000.00	Hardware			
10		41,500.00	Structural Steel Work			
11		180,784.00	Ornamental Iron & Metal Work			
12		29,990.00	Tinsmiths' & Sheet Metal Work			
13		103,377.00	Plasterers' Work			
14		219,067.00	Marble & Tile Work			
15		42,000.00	Painting			
		64,050.00	Concrete Piles			
		2,177.00	Plumbing			
		\$2,530,967.50	Totals	\$65,629.00	\$42,000.00	\$23,629.00
			Less 15%	9,844.35	6,300.00	3,544.35
			Less Previous Payments	\$55,784.65	\$35,700.00	\$20,084.65
			Amount of this Estimate	35,000.00		
				\$20,084.65		

Corrected
by W. A. Elliott, Inspector.

EXHIBIT 3.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 3.

Building: Parliament, at Winnipeg, Man.

Winnipeg, May 19, 1914.

To the Provincial Architect, Winnipeg. Sir:—We hereby make application for payment of \$42,500.00 for work done to date as per this detailed statement. Date of Contract, July 16, 1913. Certificate No. 2011, issued May 30, 1914.

Thos. Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$ 10,959.50	\$ 57,959.50	Excavators Works, Drains, Etc.	\$ 47,000.00	\$ 47,000.00	
2		169,746.50	Concrete Footings & Foundations Walls, Etc.			
3		54,895.00	Stone Masons' Work			
4		229,040.00	Reinforced Concrete Work			
5		995,465.00	Cut Stone Work, Carving, Etc.	50,000.00		\$ 50,000.00
5	317,823.00	336,452.00	Brickwork (Common Brick)	18,629.00	18,629.00	
5		35,634.00	Hollow Tile Partitions, Floors, Etc.			
6		277,612.40	Carpenter and Joiner Work			
6		20,000.00	Hardware			
7		41,500.00	Structural Steel Work			
7		180,784.00	Ornamental Iron & Metal Work			
8		29,990.00	Tinsmiths' & Sheet Metal Work			
9		103,377.00	Plasterers' Work			
11		219,067.00	Marble & Tile Work			
12		42,000.00	Painting			
14		64,050.00	Concrete Piles			
15		2,177.00	Plumbing			
		\$2,859,750.00	Totals	\$115,629.00	\$ 65,629.00	\$ 50,000.00
			Less 15%	17,344.35	9,844.35	7,500.00
			Less Previous Payments	\$ 98,284.65	\$ 55,784.65	\$ 42,500.00
			Amount of this Estimate	\$ 42,500.00		

EXHIBIT 4.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 4.

Building: Parliament, at Winnipeg.

To the Provincial Architect, Winnipeg. Sir:—We hereby make application for a payment of \$131,750.00 for work done to date as per this detailed statement. Date of Contract, July 16, 1913. Certificate No. 2014, issued June 19, 1914.

Thos. Kelly & Sons, Contractors.

June 18, 1914.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$ 10,959 50	\$ 57,959 50	Excavators Works, Drains, Etc.	\$ 47,000 00	\$ 47,000 00	\$ 10,000 00
2	159,746 60	169,746 50	Concrete Footings & Foundations Walls, Etc.			
3		54,895 00	Stone Masons' Work			
4	845,465 00	995,465 00	Reinforced Concrete Work	100,000 00	50,000 00	50,000 00
5	227,823 00	336,452 00	Cut Stone Work, Carving, Etc.	108,629 00	18,629 00	70,000 00
6	30,634 00	35,634 00	Plasterwork (Common Brick)	5,000 00		5,000 00
7		277,612 40	Work on Partitions, Floors, Etc.			
8		20,000 00	Carpeting and Joiner Work			
9		41,500 00	Hard Ware			
10		180,784 00	Structural Steel Work			
11		20,990 00	Ornamental Iron & Metal Work			
12		103,377 00	Tinsmiths' & Sheet Metal Work			
13		219,067 00	Plasterers' Work			
14		42,000 00	Marble & Tile Work			
15		64,050 00	Painting			
		2,177 00	Concrete Piles			
			Plumbing			
			Totals	\$270,629 00	\$115,629 00	\$155,000 00
			Less 15%	40,594 35	17,344 35	23,250 00
			Less Previous Payments	\$230,034 65	\$ 98,284 65	\$131,750 00
			Amount of this Estimate	98,284 65		\$131,750 00
				\$131,750 00		\$131,750 00

EXHIBIT 5.

EXHIBIT 5.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 5.

Building: Parliament, at Winnipeg.

To the Provincial Architect, Winnipeg. Sir:—We hereby make application for payment of \$107,950.00 for work done to date as per this detailed statement. Date of contract, July 13th, 1913. Certificate No. 2017, issued July 31, 1914.

Thos Kelly & Sons, Contractors.

July 28th, 1914.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$ 10,939.50	\$ 57,959.50	Excavators Works, Drains, Etc.	\$ 47,000.00	\$ 47,000.00	
2	154,746.50	199,746.50	Concrete Footings & Foundations Walls, Etc.	15,000.00	10,000.00	\$ 5,000.00
3	4,895.00	54,985.00	Stone Masons' Work.	50,000.00		50,000.00
4		229,040.00	Reinforced Concrete Work.			
5	\$800.465.00	905,465.00	Cut Stone Work, Carving, Etc.	145,000.00	100,000.00	45,000.00
6	290,823.00	336,152.00	Brickwork (Common Brick)	135,629.00	108,629.00	27,000.00
7	30,634.00	35,634.00	Hollow Tile Partitions, Floors, Etc.	5,000.00	5,000.00	
8		27,612.40	Carpenter and Joiner Work			
9		20,000.00	Hardware.			
10		41,500.00	Structural Steel Work.			
11		180,784.00	Ornamental Iron & Metal Work.			
12		29,990.00	Tinsmith's & Sheet Metal Work.			
13		103,377.00	Plasterers' Work.			
14		219,067.00	Marble & Tile Work.			
15		42,000.00	Painting			
16		64,050.00	Concrete Piles			
17		2,177.00	Plumbing			
Totals				\$397,629.00	\$270,629.00	\$127,000.00
Less 15/6				59,644.35	40,594.35	19,050.00
Less Previous Payments.						
Amount of this Estimate						
				\$337,984.65	\$ 40,594.35	\$ 19,050.00
				230,034.65		
				\$107,950.00		

EXHIBIT 6.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 5.

October 21, 1914.

Building: Parliament at Winnipeg.

To the Provincial Architect, Winnipeg. Sir:—We hereby make application for a payment of \$51,850.00 for work done to date as per this detailed statement. Date of Contract, July 16, 1913. Certificate No. 2021, issued Oct. 27th, 1914.

Thomas Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
1	\$ 3,959.50	\$ 57,939.50	Excavators Works, Drains, Etc.	\$ 54,000.00	\$ 47,000.00	\$ 7,000.00
2	139,746.00	169,746.50	Concrete Footings & Foundations Walls, Etc.	30,000.00	15,000.00	15,000.00
3	895.00	54,895.00	Stone Masons' Work.	54,000.00	50,000.00	4,000.00
4	224,040.00	229,040.60	Reinforced Concrete Work.	5,000.00		5,000.00
5	780,465.00	995,465.00	Cut Stone Work, Carving, Etc.	165,000.00	145,000.00	20,000.00
6	190,823.00	336,432.00	Brickwork (Common Brick)	145,629.00	135,629.00	10,000.00
7	30,634.00	35,634.00	Hollow Tile Partitions, Floors, Etc.	5,000.00	5,000.00	
8		277,612.40	Carpenter and Joiner Work.			
9		20,000.00	Hardware.			
10		41,500.00	Structural Steel Work.			
11		180,784.00	Ornamental Iron & Metal Work.			
12		29,990.00	Tinsmiths' & Sheet Metal Work.			
13		103,377.00	Plasterers' Work.			
14		219,067.00	Marble & Tile Work.			
15		42,000.00	Painting.			
16		64,050.00	Concrete Piles.			
17		2,177.00	Plumbing.			
Totals.				\$458,629.00	\$397,629.00	\$61,000.00
Less 15%.				68,794.35	59,644.35	9,150.00
				\$389,834.65	\$337,984.65	\$51,850.00
Less Previous Payments.				\$337,984.65		
Amount of this Estimate.				\$ 51,850.00		

169 EXHIBIT 7.

Deposition P. G. McTavish. Oct. 12, 1915. Hugh J. Macdonald,
P. M.

Attached to an "application for payment" form.

Thos. Kelly and Sons.

WINNIPEG, Nov. 17, 1913.

Provincial Government, Department of Public Works.

Progress Estimate #1.

Caisson Foundation. New Parliament Building.

To labor and materials supplied for above as follows:

Concrete with reinforcing,			
Cubic yards	7,317 @	\$12.00	\$87,804.00
Excavation "	7,317 @	7.00	51,219.00
Timbering. B. M. feet	246,560 @	40.00	9,862.40
Iron caisson rings and bolts	324,280 lbs. @	.07	22,699.50
			<hr/>
			\$171,585.00
Less 15%			25,737.75
			<hr/>
Net			\$145,847.25

(Approximately 9,871 cub. yds. concrete put in to date—Nov.
18/13. W. A. Elliott.)

EXHIBIT 8.

Deposition P. G. McTavish. Hugh J. Macdonald, P. M.

Thos. Kelly and Sons.

WINNIPEG, December 2, 1913.

Provincial Government, Department of Public Works, City.

Progress Estimate #2.

Caisson Foundation. New Parliament Building.

To labor and materials supplied for above as follows:

Concrete with reinforcing,			
Cubic yards	13,431 @	\$12.00	\$161,172.00
Excavation "	13,431 @	7.00	94,017.00
Timbering. B. M. feet	452,640 @	40.00	18,105.60
Iron caisson rings and bolts	595,320 lbs. @	.07	41,672.40
			<hr/>
			\$314,967.00
Less 15%			47,245.05
			<hr/>
			\$267,721.95
Less estimate No. 1 paid			145,847.25
			<hr/>
Amount of this estimate			\$121,874.70

EXHIBIT 9.

Deposition P. G. McTavish. Hugh J. Macdonald, P. M.
Thos. Kelly and Sons.

WINNIPEG, January 9, 1914.

Provincial Government, Department of Public Works, City.

Progress Estimate # 3.

Caisson Foundation. New Parliament Building.

To labor and materials supplied for the above as follows:

Concrete with reinforcing,			
Cubic Yards	19,357 @	\$12.00	\$232,284.00
Excavation "	19,357 @	7.00	135,499.00
Timbering. B. M. feet	734,160 @	40.00	29,366.40
Iron caisson rings and bolts....	965,580 lbs. @	.07	67,590.60
			<hr/>
			\$464,740.00
Less 15%			69,711.00
			<hr/>
			\$395,029.00
Less estimates 1 and 2 paid			267,721.95
			<hr/>
Amount of this estimate.....			\$127,307.05

EXHIBIT 10.

Deposition P. G. McTavish. Oct. 12, 1915. Hugh J. Macdonald,
P. M.

Thos. Kelly and Sons.

Winnipeg.

Provincial Government, Department of Public Works.

Progress Estimate #4.

Caisson Foundation. New Parliament Building.

To labor and materials supplied for above as follows:

Concrete with reinforcing,			
Cubic yards	27,680 @	\$12.00	\$332,160.00
Excavation "	27,680 @	7.00	193,760.00
Timbering. B. M. feet	1,015 M @	40.00	40,600.00
Iron caisson rings and bolts....	667 tons @	140.00	93,380.00
			<hr/>
			\$659,900.00
Less 15%			98,985.00
			<hr/>
			\$560,915.00
Less estimates 1, 2 & # —			395,029.00
			<hr/>
Amount of this estimate.....			\$165,886.00

EXHIBIT 11.

Deposition of P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

Thos. Kelly and Sons,

Winnipeg, March 7, 1914.

Provincial Government, Department of Public Works.

Progress estimate #5.

Caisson Foundation, New Parliament Building.

To labor and materials supplied for above as follows:

Concrete with reinforcing,			
Cubic yards	35993 @	\$12.00	\$431916.00
Excavation	35993 @	7.00	251951.00
Timbering. B. M. feet	1213M @	40.00	48520.00
Iron caisson rings and bolts,	797.5 tons @	140.00	111650.00
			<u>\$844037.00</u>
Less 15%			126605.55
			<u>\$717431.45</u>
Less estimates 1, 2, 3, 4			560915.00
Amount of this estimate			<u>\$156516.00</u>

EXHIBIT 12.

Deposition of P. G. McTavish, October 12, 1915. Hugh J. Macdonald, P. M.

Thos. Kelly and Sons,

Winnipeg, April 10, 1914.

Provincial Government, Department of Public Works.

Progress estimate #6, Final.

Caisson Foundation, New Parliament Building.

To labor and materials supplied for above as follows:

Concrete with reinforcing,			
Cubic yards	35993 @	\$12.00	\$431916.00
Excavation	35993 @	7.00	251951.00
Timbering. B. M. feet	1213M @	40.00	48520.00
Iron caisson rings and bolts,	797.5 tons @	140.00	111650.00
			<u>\$844037.00</u>
Less estimates 1-5 inclusive			717431.45
			<u>\$126605.55</u>
Amount of draw back on estimates #1-5, less amount included in our tender for concrete piles,			64050.00
Amount of this estimate:			<u>\$62555.55</u>

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EXHIBIT 13.

Deposition P. G. McTavish, Oct. 12, 1915. Hura J. Macdonald.

APPLICATION FOR PAYMENT.

Progress Estimate No. 1.

To the Provincial Architect, Winnipeg. Sir:—We hereby make application for a payment of \$80,750.00 for work done to date as per this detailed statement. Date of contract, March 26, 1914. Certificate No. 2,012, issued June 9, 1914.

June 2d, 1914.

Thos. Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
7	\$ 135,100.00	\$ 230,100.00	Caisson Grillage & Grillage Beams.....	\$ 95,000.00		\$ 95,000.00
	\$ 135,100.00	\$ 230,100.00	Totals.....	\$ 95,000.00		\$ 95,000.00
			Less 15%.....	14,250.00		14,250.00
				\$ 80,750.00		\$ 80,750.00
			Amount of this Estimate.....	\$ 80,750.00		

EXHIBIT 14.
Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 2.

July 3, 1914.

Building: Parliament, at Winnipeg.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$85,000.00 for work done to date as per this detailed statement. Date of contract, March 26, 1914. North Wing. Certificate No. 2015, issued July 8, 1914. Thos. Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
7		\$230,100 00	Caisson Grillage and Grillage Beams.....	\$195,000 00	\$ 95,000 00	\$100,000 00
		\$230,100 00	Totals.....	\$195,000 00	\$ 95,000 00	\$100,000 00
			Less 15%.....	29,250 00	14,250 00	15,000 00
			Less Previous Payments.....	\$165,750 00	\$ 80,750 00	\$ 85,000 00
			Amount of this estimate.....	80,750 00		
				\$ 85,000 00		

EXHIBIT 15.
Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 3.

July 29, 1914.

Building: Parliament, at Winnipeg.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$29,835.00 for work done to date as per this detailed statement. Date of Contract, March 26, 1914. North Wing, steel. Certificate No. 2018, issued July 31, 1914. Thos. Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Amount of Previous Payments	Amount asked per this Estimate
7		\$230,100.00	Caisson Grillage and Grillage beams.....	\$230,100.00	\$195,000.00	\$ 35,100.00
			Totals.....	\$230,100.00	\$195,000.00	\$ 35,100.00
			Less 15%.....	34,515.00	29,250.00	5,265.00
			Less Previous Payments.....	\$195,585.00	\$165,750.00	\$ 29,835.00
			Amount of this Estimate.....	\$ 29,835.00		\$ 29,835.00

EXHIBIT 16.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 1.

July 3, 1914.

Building: Parliament Building, at Winnipeg.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a payment of \$157,250.00 for work done to date as per this detailed statement. Date of Contract, July 20, 1914. Grillage for Dome Section and South Wing. Certificate No. 2016, issued July 8, 1914.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work Done to Date	Thos. Kelly & Sons, Contractors.	
					Amount of Previous Payments	Amount asked per this Estimate
7		\$215,000.00	Caisson Grillage, Grillage Beams and Concrete...	\$185,000.00		\$185,000.00
		\$215,000.00	Totals.....	\$185,000.00		\$185,000.00
			Less 15%.....	27,750.00		27,750.00
				\$157,250.00		\$157,250.00
			Amount of this Estimate.....	\$157,250.00		

EXHIBIT 17.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 2.

Building: Parliament, at Winnipeg.

July 29, 1914.

To the Provincial Architect, Winnipeg. Sir: We hereby make application for a Payment of \$25,500.00 for Work Done to date as per this Detailed Statement. Date of Contract July 20, 1914. Caisson grillage for Dome section and South Wing. Certificate No. 2020, issued July 30, 1914.

		Thos. Kelly and Sons, Contractors.	
No.	Detailed Amount of Contract	Value of Work done to Date	Amount asked per this Estimate
7	\$215,000.00	Caisson Grillage, Grillage Beams & Concrete....	\$185,000.00
		Totals.....	\$30,000.00
		Less 15%.....	4,500.00
		Less Previous Payments.....	\$25,500.00
		Amount of this Estimate.....	\$25,500.00

EXHIBIT 19.

Deposition. P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald, P. M.

APPLICATION FOR PAYMENT.

Progress Estimate No. 1.

July 28, 1914.

Building: Parliament, at Winnipeg.

To the Provincial Architect, Winnipeg. Sir: We hereby make Application for a Payment of \$29,911.50 for Work Done to date as per this Detailed Statement. Date of Contract, May 22, 1914. Changing rubble walls in basement to brick. Certificate No. 2019, issued July 31, 1914.

Thos. Kelly & Sons, Contractors.

No.	Balance to Complete	Detailed Amount of Contract	PARTICULARS	Value of Work done to Date	Amount of Previous Payments	Amount asked per this Estimate
5			Brickwork (Common Brick).....	\$35,190.00		\$35,190.00
			Totals.....			\$35,190.00
			Less 15%.....			5,278.50
			Amount of this Estimate.....	\$29,911.50		\$29,911.50
						\$29,911.50

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EXHIBIT 20.

Deposition of P. G. McTavish, Oct. 12, 1915. Hugh J. Macdonald,
P. M.

Attached to "application for payment," form.

WINNIPEG, Dec. 15th, 1913.

Provincial Government of Manitoba, Department of Public Works.

Re New Parliament Buildings.

To excavating done previous to moving site of building 40.0 to the
south 1506 yards @ \$1.50.....\$2259.00

O. K. as regards number of yards.

(Signed)

W. A. ELLIOTT, *Inspector.*

Note.—Price of excavating reduced from \$2 per cubic yard to \$1.50.
Certified correct.

(Signed)

V. W. HORWOOD,
Provincial Architect.

March 4/14.

174½ UNITED STATES OF AMERICA,

Northern District of Illinois, City of Chicago, ss:

In the Matter of the Application for the Extradition of THOMAS
KELLY, Before Commissioner Lewis F. Mason, in Room 603 Fed-
eral Building, Chicago, Illinois.

Transcript of Proceedings.

The following is a stenographic transcript of the proceedings had
in the above entitled cause, at the continued hearing before Commis-
sioner Lewis F. Mason, commencing at 11 o'clock a. m., October 21,
1915, in Room 603 Federal Building, Chicago, Cook County, Illinois,
the following counsel being present:

Present:

Messrs. Bulkley and More (of Mulkley, More and Tallmadge), and
Hon. R. A. Bonnar, appearing on behalf of the Canadian Gov-
ernment.

Mr. John S. Miller and W. A. F. Sweatman, appearing on behalf
of the respondent, Thomas Kelly.

The Commissioner: Well, gentlemen, are you ready to proceed
in this matter?

Mr. Bulkley: We are on our side.

The Commissioner: And Mr. Miller?

Mr. Miller: If the Commissioner please, Mr. Forrest has sent in his withdrawal as counsel, I think he sent in his withdrawal.

The Commissioner: Yes, it was filed on the 16th.

Mr. Miller: And upon his withdrawal I have been engaged as counsel by Mr. Kelly to take his place. And such little time as I have had since that time, I have given, with Mr. Sweatman, counsel from Winnipeg, to the matter. As, and perhaps it has not escaped the attention of the Commissioner, the case made by the applicant is somewhat voluminous.

The Commissioner: Well, I have not gone through it, I don't know that they made a case yet, all I have is——

Mr. Miller: I do not either, if the Commissioner please, but it is certainly voluminous. I should judge, putting it into pages, that it would be 300 pages or more.

175 The Commissioner: Well, there are nearly 400 pages, but I think there are some 70 galleys.

Mr. Miller: Yes. Well, at any rate, it is intricate, and back of that, as has been suggested to your Honor, and as I understand, is a mass of history and facts, and I just want to say in a word to the Commissioner that I shall have to ask for some reasonable time to prepare the case and be ready to present it to the Commissioner, that is very obvious, and I can work as hard as anybody, and I shall be very glad to do it, and I will give it my exclusive time, and I should think—I understand counsel are here from Winnipeg, Mr. Bonnar and Mr. Sweatman, and I should think that a couple of weeks would be brief and short, and that would give Mr. Bonnar an opportunity to return and come again, if he wants to be here at the time, and I do not see how I could promise to be ready in any less time than that. I think that is the first thing that I want to suggest to the Commissioner.

The Commissioner: They are in consultation. I will see what they have to say.

Mr. Miller: Yes.

The Commissioner: What do you suggest, Mr. Bulkley?

Mr. Bulkley: Mr. Bonnar would like to make a statement as to what his engagements are.

The Commissioner: Very well.

Mr. Bulkley: I do not believe they are such as he can consent to any continuance of that kind.

The Commissioner: Very well.

Mr. Bonnar: May it please your Honor, in order to be here I had to have a case which I was in, and which was somewhat important, postponed for six months, it was a conspiracy case in Saskatchewan, and I had considerable difficulty in getting that case postponed on account of my being required to remain over here, as it was thought. Now, our Assizes at Winnipeg open on the 2nd day of November, at which I will be engaged for a month steadily; I will be engaged in two somewhat important cases, one being a murder case and the other being a manslaughter case, so that they will occupy my attention considerably. Now, if I return now, it would be impossible

for me, if it were necessary for me to be here, it would be impossible for me to be here a gain before some time in the month of December. I could not return and come back here before the 2nd of December.

The Commissioner: Let me ask this question, gentlemen. What will the procedure be when you do ultimately get a hearing?

Mr. Miller: Well, I was going to answer the Commissioner upon that, and I might as well state it now and get ready for it. We had expected to present—as I suggested, it was the view of counsel, and that was a thing I was going to take up right after that—we had expected to present evidence as we have a right to do, evidence on behalf of the respondent here and to suggest, that perhaps the only way and the most convenient way, and the briefest way for that to be done would be to present it as the government has presented theirs, by depositions or affidavits, or in such a way as would be satisfactory to the Commissioner and the parties, or in some cases, bring the witness here, and to go right at that as soon as I can in order to ascertain what the situation is with respect to it, and without any sort of lack of diligence, get ready to present it, and as I said, I propose to give up my time to this case pretty exclusively for a while. The Commissioner has been informed, I think, at any rate I have, and all counsel know that there has been a mass of investigation or investigations at Winnipeg, the testimony of which in one of them, Mr. Sweatman tells me, is in a large number of volumes. Seven volumes, which I think I have seen in a sealed wrapper that has not yet been opened. Well, it will require some looking into to find out whatever this man fairly should have presented on his behalf. And the amount of time that that would take I don't know. It might be that if we came in here in two weeks that very reasonably and necessarily I should have to ask for further time upon that, I can't tell, but at any rate I can assure the Commissioner and counsel upon the other side that the thing will be pressed just as fast as the situation of the place will permit, and with all due diligence.

The Commissioner: Do I understand—and this need not be final, that it is the idea of the demanding government that this testimony which has now been presented will be all of the testimony on behalf of the demanding government?

Mr. Bulkley: That is all.

The Commissioner: Unless rebuttal is necessary.

Mr. Bulkley: That is all.

Mr. Bonnar: Except some statutes.

Mr. Bulkley: Yes, except some statutes.

176 The Commissioner: That and the statutes will be substantially the demanding government's case?

Mr. Bulkley: Yes.

The Commissioner: Very well.

Mr. Bulkley: We will close our case in ten minutes, if we have a hearing now. Ordinarily reading depositions of that character is sufficient in connection with the argument.

Mr. Miller: I think the first thing, when the depositions would be offered, we would want to present our objections.

The Commissioner: General objections?

Mr. Miller: Yes.

The Commissioner: And then specify as they are taken up in the argument?

Mr. Miller: Yes.

The Commissioner: Which could be noted as if taken at the time?

Mr. Miller: Any form that would be most convenient, if the Commissioner please.

The Commissioner: In the economy of time?

Mr. Miller: Any form that would be most brief, and in the economy of time would satisfy us. Now, I have just this suggestion, that the issues on this sort of a case are limited to a very narrow—they are limited to very narrow issues. This is not a trial, we are not going to try out the questions that arose out of all this evidence, by any means. There are only two issues here that can be heard at all. Is there sufficient evidence to make it probably that a crime has been committed and that that crime is one that is extraditable; and, second, is the respondent one of the parties to that crime.

Mr. Bulkley: That is all there is to it.

Mr. Bulkley: And all that is required, is sufficient evidence that would bind a man over to the grand jury here. If these same transactions had been committed in the building of the building.

The Commissioner: I think that is a clear statement of the issues.

Mr. Bulkley: So that the Supreme Court has held us to those issues, and it does not seem to me that it requires any great amount of preparation on those issues.

Mr. Miller: Well, it requires the demanding people here to present depositions of from 10 to 15 witnesses already on their side. I am not stating how much, whether one or two or three or a dozen—I have got to look into the case to find out. Of course, we all agree that we are not trying the respondent here. We are finding 176½ out whether a case has been made or exists to demand his extradition.

The Commissioner: Well, then, we are confronted with this practical situation, that these depositions and exhibits are offered on behalf of the demanding government, the testimony taken on the last occasion as to the identity has been heard, the offer of the statutes—do you want to make that offer now, so that the demanding government can rest its case?

Mr. Bulkley: Very well.

The Commissioner: Is that agreeable, that that be done now, so that the burden is upon you.

Mr. Miller: Why, yes, subject to objections that may be urged.

The Commissioner: Yes.

Mr. Miller: Very well.

Mr. Bulkley: I would like to offer in evidence certain statutes of the Canadian Code, that are and have been for many years in force in Canada, and I have prepared for the record copies of them.

Provisions of Canadian Criminal Code.

Section 2, Subsection 13:

"Every One," "Person," "Owner," and other expressions of the same kind include His Majesty and all public bodies, bodies corporate, societies, companies and inhabitants of counties, parishes, municipalities or other districts in relation to such acts and things as they are capable of doing and owning respectively;

As by the terms of this clause, the expression "person" includes bodies corporate, etc., in relation, only, to acts and things which they are capable of doing, it has been held that a corporation is not subject to indictment upon a charge of any crime the essence of which is either personal criminal intent or such a degree of negligence as amounts to a wilful incurring of the risk of causing injury to others, and that consequently it cannot be indicted for manslaughter: (7)

But, although a corporation cannot be guilty of the crime of manslaughter, it may, nevertheless, be indicted under section 284, post, for the crime of having caused previous bodily injury, by omitting, without lawful excuse, to perform the duty (imposed upon every one, by section 247, post), of using reasonable care to avoid danger to human life, from anything in its charter or under its control, and the fact that the consequence of the omission to perform such duty might, in the case of a human being, have justified a charge of manslaughter, is no ground for quashing the indictment; (8)

Section 2, Subsection 16:

"Indictment" and "Count" respectively include information and presentment as well as indictment, and also any plea, replication or other pleading, any formal charge under section 873a, and any record; (As amended by 6 & 7 Edw. VII. c. 8, s. 2);

Section 69:

Every one is a party to and guilty of an offence who,—

(a) actually commits it; or

(b) does or commits an act for the purpose of aiding any person to commit the offence; or

(c) abets any person in commission of the offence; or

(d) counsels or procures any person to commit the offence.

If several persons form a common intention to prosecute any unlawful purpose, and to assist each other therein, each of them is a party to every offence committed by any one of them in the prosecution of such common purpose, the commission of which offence was, or ought to have been known to be a probable consequence of the prosecution of such common purpose. 55-56 V., c. 29, s. 61.

Section 70:

Every one who counsels or procures another person to be a party to an offence of which that person is afterwards guilty, is a party to that offence, although it may be committed in a way different from that which was counselled or suggested.

2. Every person who counsels or procures another to be a party to an offence is a party to every offence which that other commits

in consequence of such counselling or procuring, and which the person counselling or procuring knew, or ought to have known, to be likely to be committed in consequence of such counselling or procuring. 55-56 V., c. 29, s. 62.

Section 347 and Subsection:

Thefts defined.—Theft or stealing is the act of fraudulently and without color of right taking, or fraudulently and without color of right converting to the use of any person, anything capable of being stolen, with intent,—

(a) to deprive the owner, or any person having any special property or interest therein, temporarily or absolutely, of such thing, or of such property or interest; or

(b) to pledge the same or deposit it as security; or

(c) to part with it under a condition as to its return which the person parting with it may be unable to perform; or

(d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion.

2. Theft is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become movable, with intent to steal it.

3. The taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment.

4. It is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting. 55-56 V., c. 29, s. 305.

Section 359 and Subsection:

Clerks and servants—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who,

(a) being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, steals anything belonging to or in the possession of his master or employer; or

Section 359 and Subsection continued:

(b) being a cashier, assistant cashier, manager, officer, clerk, or servant of any bank, or savings bank, steals any bond, obligation, bill obligatory or of credit, or other bill or note, or security for money, or any money or effects of such bank, or lodged or deposited with any such bank; or,

(c) being employed in the service of His Majesty, or of the Government of Canada or the government of any province of Canada, or of any municipality, steals anything in his possession by virtue of his employment. 55-56 V., c. 29, s. 319; 57-58 V., c. 57, s. 1.

Section 390:

Criminal breach of trust—Every one is guilty of an indictable offence and liable to seven years' imprisonment who, being a trustee of any property for the use or benefit, either in whole or in part, of some other person, or for any public or charitable purpose, with intent to defraud, and in violation of his trust, converts anything of which he is trustee to any use not authorized by the trust. 55-56

V., c. 29, s. 363.

178 Section 399:

Receiving property obtained by any indictable offence.—Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who receives or retains in his possession anything obtained by any offence punishable on indictment, or by any acts wheresoever committed, which, if committed in Canada, would have constituted an offence punishable upon indictment, knowing such thing to have been so obtained. 55-56 V., c. 29, s. 314.

Section 400:

Receiving stolen property.—Every one is guilty of an indictable offence and liable to five years' imprisonment who receives or retains in his possession any post letter or post letter bag, or any chattel, money or valuable security, parcel or other thing, the stealing whereof is hereby declared to be an indictable offence, knowing the same to have been stolen. 55-56 V., c. 29, s. 315.

Section 402:

When receiving is complete.—The act of receiving anything unlawfully obtained is complete as soon as the offender has, either exclusively or jointly with the thief or other person, possession of or control over such thing, or aids in concealing or disposing of it. 55-56 V., c. 29, s. 317.

Section 404:

False Pretences Definition.—A false pretence is a representation, either by words or otherwise, of a matter of fact either present or past, which representation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation.

2. Exaggerated commendation or depreciation of the quality of anything is not a false pretence, unless it is carried to such an extent as to amount to a fraudulent misrepresentation of fact.

3. It is a question of fact whether such commendation or depreciation does or does not amount to a fraudulent misrepresentation of fact. 55-56 V., c. 29, s. 358.

Section 405:

Punishment for obtaining by false pretence.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud, by any false pretence, either directly or through the medium of any contract obtained by such false pretence, obtains anything capable of being stolen, or procures anything capable of being stolen to be delivered to any other person than himself. 55-56 V., c. 29, s. 359.

Section 405a:

Obtaining credit by false pretences.—Every one is guilty of an indictable offence and liable to one years' imprisonment who, in incurring any debt or liability, obtains credit under false pretences, or by means of fraud (Added by 7-8 Ed. VII., c. 18, sec. 6.)

Section 406:

Obtaining execution of valuable security by false pretence.—Every one is guilty of an indictable offence and liable to three years' imprisonment who, with intent to defraud or injure any person by any false pretence, causes or induces any person to execute, make, accept,

endorse, or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal on any paper or parchment in order that it may afterwards be made or converted into or used or dealt with as a valuable security. 55-56 V., c. 29, s. 360.

Section 444:

Conspiracy to defraud—Every one is guilty of an indictable offence and liable to seven years' imprisonment who conspires with any other person, by deceit or falsehood or other fraudulent means to defraud the public or any person, ascertained or unascertained, or to affect the public market price of stocks, shares, merchandise, or anything else publicly sold, whether such deceit or falsehood or other fraudulent means would or would not amount to a false pretence as hereinbefore defined. 55-56 V., c. 29, s. 394.

Section 170:

Perjury defined—Perjury is an assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in a judicial proceeding as part of his evidence, upon oath or affirmation, whether such evidence is given in open court, or by affidavit or otherwise, and whether such evidence is material or not, such assertion being known to such witness to be false, and being intended by him to mislead the court, jury or person holding the proceeding.

2. Subornation of perjury defined—Subornation of perjury is counselling or procuring a person to commit any perjury which is actually committed.

3. Evidence defined—Evidence in this section includes evidence given on the voir dire and evidence given before a grand jury. 55-56 V., c. 29, s. 145.

Section 171 and Subsection 2:

Witness defined—Every person is a witness within the meaning of the last preceding section who actually gives his evidence, whether he was competent to be a witness or not, and whether his evidence was admissible or not.

2. Judicial proceeding—Every proceeding is judicial within the meaning of the last preceding section which is held in or under the authority of any court of justice, or before a grand jury, or before either the Senate or House of Commons of Canada, or any committee of either the Senate or House of Commons, or before any legislative council, legislative assembly or house of assembly or any committee thereof, empowered by law to administer an oath, or before any justice, or any arbitrator or umpire, or any person or body of persons authorized by law or by any statute in force for the time being to make an inquiry and take evidence therein upon oath, or before any legal tribunal by which any legal right or liability can be established, or before any person acting as a court, justice or tribunal, having power to hold such judicial proceeding, whether duly constituted or not, and whether the proceeding was duly instituted or not before such court or person so as to authorize it or him to hold the proceeding, and although such proceeding was held in a wrong place or was otherwise invalid. 55-56 V., c. 29, s. 145.

Section 174:

Punishment of perjury or subornation of perjury—Every one is

guilty of an indictable offence and liable to fourteen years' imprisonment who commits perjury or subornation of perjury.

Section 852 and Subsections 2 and 3:

Statement of substance of offence, in popular language, or in words of enactment, etc.—Every count of an indictment shall contain, and shall be sufficient if it contains in substance, a statement that the accused has committed some indictable offence therein specified.

2. Such statement may be made in popular language without any technical averments or any allegations of matter not essential to be proved.

3. Such statement may be in the words of the enactment describing the offence or declaring the matter charged to be an indictable offence, or in any words sufficient to give the accused notice of the offence with which he is charged.

Section 854:

Offences may be charged in the alternative—A count shall not be deemed objectionable on the ground that it charges in the alternative several different matters, acts or omissions which are stated in the alternative in the enactment describing any indictable offence or declaring the matters, acts or omissions charged to be an indictable offence, or on the ground that it is double or multifarious. 55-56 V., c. 29, s. 612.

Section 855:

Count not objectionable or insufficient because of omission of certain statements—No count shall be deemed objectionable or insufficient for the reason only—

(a) that it does not contain the name of the person injured, or intended, or attempted to be injured; or,

(b) that it does not state who is the owner of any property therein mentioned; or,

(c) that it charges an intent to defraud without naming or describing the person whom it was intended to defraud; or,

(d) that it does not set out any document which may be the subject of the charge; or,

(e) that it does not set out the words used where words used are the subject of the charge; or,

(f) that it does not specify the means by which the offence was committed; or,

(g) that it does not name or describe with precision any person, place or thing; or,

(h) that it does not in cases where the consent of any person, official or authority is required before a prosecution can be instituted, state that such consent has been obtained.

Section 856:

Joinder of counts—Any number of counts for any offences whatever may be joined in the same indictment, and shall be distinguished in the manner shown in form 63, or to the like effect: Provided that to a count charging murder no count charging any offence than murder shall be joined.

Section 859:

Particulars may be ordered—The Court may, if satisfied that it is necessary for a fair trial, order that the prosecutor shall furnish a particular—

(a) of what is relied on in support of any charge of perjury, the making of a false oath or of a false statement, fabricating evidence or subornation, or procuring the commission of any of such offences:

(b) of any false pretences or any fraud charged;

(c) of any attempt or conspiracy by fraudulent means;

(d) stating what passages in any book, pamphlet, newspaper or other printing or writing are relied on in support of a charge
180 of selling or exhibiting an obscene book, pamphlet, newspaper, printing or writing;

(e) further describing any document or words the subject of a charge;

(f) further describing the means by which any offence was committed;

(g) further describing any person, place or thing referred to in any indictment. 55-56 V., c. 29, ss. 613, 615 and 616.

Section 860:

Copy particulars to be supplied to the accused—When any particular as aforesaid is delivered a copy shall be given without charge to the accused or his solicitor, and it shall be entered in the record and the trial shall proceed in all respects as if the indictment had been amended in conformity with such particular.

Section 862:

Indictments for perjury, etc.—No count charging perjury, the making of a false oath or of a false statement, fabricating evidence or subornation, or procuring the commission of any of these offences, shall be deemed insufficient on the ground that it does not state the nature of the authority of the tribunal before which the oath or statement was taken or made, or the subject of the inquiry, or the words used, or the evidence fabricated, or on the ground that it does not expressly negative the truth of the words used. 55-56 V., c. 29, s. 616.

Section 863:

Indictment for false pretence—No count which charges any false pretence, or any fraud, or any attempt or conspiracy by fraudulent means, shall be deemed insufficient because it does not set out in detail in what the false pretence or the fraud or fraudulent means consisted. 55-56 V., c. 29, s. 616.

Mr. Miller: What are they—a part of the Criminal Code?

Mr. Bulkley: They are a part of the Criminal Code of Canada. Now, then, I have the books here and I have the witness—Mr. Bonnar can testify to that if it is necessary, if it is disputed at all?

The Commissioner: Well, under the agreement on the last occasion that would not be necessary, as I take it, Mr. Sweatman?

Mr. Sweatman: No.

Mr. Miller: No, I don't think so.

Mr. Sweatman: I don't think so.

The Commissioner: No.

Mr. Miller: We will take and verify that.

The Commissioner: Yes.

Mr. Bulkley: I will give you a copy of that.

Mr. Miller: Of course, in the offering of evidence here, if the Commissioner please, and before the demanding authorities rest, it is open to us to make any objections that we may have to make?

The Commissioner: Oh, yes.

Mr. Miller: To the certificates and to anything that may—or to any part of the cases of the government? That we find objectionable?

The Commissioner: Yes, you are not precluded from making objections at any time.

Mr. Miller: Oh, no.

The Commissioner: You are not objecting on the ground that the formal proof of the statute is not offered?

Mr. Miller: Oh, no. We are as familiar with these statutes, probably, as is counsel, and we expect merely to see that they are right.

The Commissioner: Very well.

Mr. Miller: And then make any objections—we will make no objections to the form of the proof of the Criminal Code we don't expect to raise any question on that, but it is the certificates and the competency of the evidence.

The Commissioner: Yes.

Mr. Miller: Such as we would offer if the witnesses were here. And other objections that we might make.

Mr. Bulkley: It may be conceded, then, that these sections of the criminal statute—

The Commissioner: If correctly copied?—offered in evidence.

Mr. Bulkley: And are sufficiently proven for offering in evidence here?

Mr. Miller: Yes.

Mr. Bulkley: In other words, you waive the proving of the book?

Mr. Miller: We do not object to the form of the proof, if you have given us correct copies. And we will agree on the book—we will agree on the use of the printed Code, if necessary, the Criminal Code of Canada.

The Commissioner: Very well.

Mr. Miller: There is an edition of the Code that is printed by the King's Printer—what is called the King's Printer, that there is such an edition in Canada, and we will not object to the use of that volume. No doubt they have a copy of it here.

Mr. Bonnar: This is the latest edition, Crankshaw's.

Mr. Miller: Very well.

Mr. Bulkley: That is the one that is used by the courts, the judges and the lawyers in Canada.

Mr. Miller: I don't want to agree that notes of some annotated edition should go in evidence?

Mr. Bulkley: Oh, no. I am not offering any notes. That is the reason I used the official edition.

Mr. Miller: Is that right, Mr. Sweatman?

Mr. Sweatman: Yes.

Mr. Bonnar: This is used more than any other copy, is it not?

Mr. Sweatman: Yes.

Mr. Bulkley: It will stand as conceded——

Mr. Bonnar: It is the same section.

Mr. Bulkley: It will stand as conceded that Crankshaw's Criminal Code, if these sections are correctly copied from it, that that is sufficient?

Mr. Miller: May be used to verify it?

Mr. Bulkley: Yes.

Mr. Miller: May be used to verify the sections?

Mr. Bulkley: Yes.

Mr. Sweatman: I don't know that he is referring to his annotated book, Mr. Commissioner, but all I want to do is to safeguard it. That we do not want any sheets here with the notations of the authority, considered as in evidence.

The Commissioner: No.

Mr. Bulkley: Of course not.

The Commissioner: That could not be considered as evidence.

Mr. Sweatman: I just wanted to safeguard it.

Mr. Bulkley: Well, I think that is all, now, with the identification and the depositions attached to the complaint and these sections of the Criminal Code, that is our case.

Mr. Miller: Reserving the right to put in our objections to the different parts of the case, why, we would say then that we would like the time that we have asked for.

The Commissioner: This is the 21st day of October.

Mr. Miller: Yes.

The Commissioner: One week from today would be the 20th of October, and two weeks from today would be November 4th.

Mr. Miller: I believe that is correct.

The Commissioner: I suppose, gentlemen, if they contemplate, and I have no doubt that Mr. Miller believes that they do contemplate bringing witnesses from Canada, that it will require them at least two weeks——

Mr. Miller: Or to take their depositions.

The Commissioner: Well, if it is your desire to take depositions, I don't believe they are competent, Mr. Miller.

Mr. Miller: You don't believe the depositions are competent?

The Commissioner: No, I don't believe they would be competent. As I remember one authority of the Supreme Court of the United States, they refused to reverse a Commissioner because he declined to receive depositions taken on behalf of the respondent, and that is in the Oteiza case, reported in the 135 or the 136 United States Supreme Court Report.

Mr. Miller: Well, I would suppose even then, that while the Commissioner could not be compelled to take them, where convenience required it and the time required it, that it might be within the power of the Commissioner to do it, although it would not be error—the question there arose, I take it, on habeas corpus?

The Commissioner: Of course, you could take advantage of it.

Mr. Miller: There the question arose on habeas corpus—the case

your Honor refers to is a case of habeas corpus, where the error would be so striking that it would entitle the respondent to his discharge, if the Commissioner had refused when he ought to have received it. That is one question, whether it would have that, and whether the Commissioner has the right to take the evidence of this kind is another question, and I should think that he had. He is sitting as a committing magistrate here, practically. And under the statute that authorizes at least the oral testimony, if the witnesses were here. Now, is it within the power of the Commissioner *to*, instead of requiring them to come here, to receive their depositions, as he has from the demanding government?

The Commissioner: Well, I would want to read that case, Mr. Miller:

Mr. Miller: Admitting that it would not be error to refuse, so that on a habeas corpus the respondent might get his discharge, that would be an entirely different question. Well, at any rate——

The Commissioner: Is it the idea—you would want to do
182 that between now and the end of two weeks, if that was going to be your procedure, wouldn't you?

Mr. Miller: We would try our very best to do it.

The Commissioner: I think that question ought to be disposed of, whether I would receive it, or whether I would authorize it, before we go into it.

Mr. Miller: What would be the attitude of Mr. Bulkley on that—that we should offer as they have?

Mr. Bulkley: I should certainly object to it as incompetent, under the ruling of the Supreme Court.

The Commissioner: What is the citation of that case?

Mr. Bulkley: The 136 United States.

The Commissioner: A case in the 136 United States?

Mr. Bulkley: Yes.

Mr. Bulkley: (Reading from 136 U. S. Reports:)

"We are of opinion that section 5 of the act of August 3, 1882, applies only to papers or copies thereof, which are offered in evidence by the prosecution to establish the criminality of the person apprehended; and that it does not apply to documents or depositions offered on the part of the accused, any more than did the provisions of section 5271 of the Revised Statutes, either as originally enacted or as amended by the act of June 19, 1876, c. 133, 19 Stat., 59.

This view was held by Judge Brown, in the District Court for the Southern District of New York, in March, 1883, in *In re Wadge*, 15 Fed. Rep., 864. In that case, the commissioner had refused to adjourn the proceedings before him in order to enable the accused to procure depositions from England, to establish an alibi. Judge Brown considered the act of August 3, 1882, and held that while it was the duty of the commissioner, under section 3 of that act, to take such evidence of oral witnesses as should be offered by the accused, the statute did not apply to testimony obtained upon commission or by deposition, adding that, so far as he was aware, there was no warrant, according to the law or the practice before committing magistrates in the State of New York, for receiving testimony by commis-

sion or by the depositions of foreign witnesses taken abroad, and that all the provisions of the law and the statutes contemplated the production of the defendant's witnesses in person before the magistrate for examination by him. The order dismissing the writ of habeas corpus in that case was affirmed by the Circuit Court, held by Judge Wallace, in *In re Wadge*, 21 Blachford, 300. He said: 'The depositions and proofs presented a sufficient case to the commissioner for the exercise of his judicial discretion, and his judgment cannot be reviewed upon this proceeding. He is made the judge of the weight and effect of the evidence, and this court cannot review his action, when there was sufficient competent evidence before him to authorize him to decide the merits of the case.

Mr. Miller: Now, he is referring to peremptory law. The question whether, on habeas corpus—

Mr. Bulkley: I am reading only the law that there is in the Federal Statutes regarding depositions in these cases.

The Commissioner: Yes, or permitting depositions?

Mr. Bulkley: Yes.

Mr. Miller: Well, as I say, the question arose under section—oral testimony they said is admissible?

But it don't provide for depositions, therefore if depositions are excluded by the Commissioner, it don't make a case for the respondent to receive his discharge on habeas corpus, but where the Commissioner is sitting, might not he himself admit that evidence, as a matter of discretion, recognizing that if he refused, it would be discretionary and not the right of the respondent? Now, there is an altogether different question, as to the question of the right of the respondent and the question of the discretion of the Commissioner to receive the evidence.

The Commissioner: There is not much discretion given to the Commissioner in these matters.

Mr. Miller: Well, I don't know about that.

The Commissioner: We are guided by the statutes and treaties, and the Supreme Court of the United States has held us to the wording pretty strictly.

Mr. Miller: Of course, there is a field of discretion. I should think the discretion, perhaps, goes a good ways. It is not absolutely limited. Now, upon the question of admitting the respondent to bail, there is a limited field to the discretion there by the Commissioner. That has been recognized, although the statutes don't provide for it, and there is before the Commissioner here now, or there has been a suggestion of bail, and an open suggestion, that has not yet been disposed of, and which we expect also to hopefully present to the Commissioner to make a case, such as the law contemplates, and that is a field of discretion that the law recognizes, although the statute don't specifically provide for it, and the Supreme Court refused to say that the Commissioner did not have any discretion in the matter of bail, and

183 it has been recognized at least in one case, it has been followed in at least one case, and we want the field open that way, because we expect to present that question to the Commissioner; and so

here, on this question the object of the Commissioner is to find out whether there is probable cause to extradite this man or not.

There is a field where the defendant may introduce his evidence, against him, he only weighs the evidence, and if there is probable cause he has to decide in favor of the demanding government, but there are lots of facts that may be so conclusively denied and disproved—for instance, I am speaking of a possible case, that the Commissioner—or that there are links here that may be shown to be wanting by the defendant's proof, that the Commissioner will be compelled to say that there is not a case for extradition, there is no probable cause here, there is not a presumptive case that all of that is barred by the evidence that has been offered before the Commissioner. Now, so far as the satisfaction of the Commissioner is concerned, that might just as well be done for the respondent, on deposition, as it might for the government. There is not any right that the demanding government has to say that a deposition for the defendant is not just as believable or just as credible or just as much entitled to credibility, as a deposition on the part of themselves. It is precisely the same thing, if the Commissioner please. However, when the Commissioner shall have decided it, why we will recognize upon that matter of the use of depositions, if he should decide against us, that he has exercised his discretion himself, and that the law is that—we could not complain, but that is not the question before your Honor.

We are appealing to the Commissioner's discretion upon this thing.

Mr. Miller: What was the case, what was the name of the case?

Mr. Bulkley: The name of the case is *In re Luis Oteiza y Cortes*.

Mr. Miller: Oh, yes, that is a Cuban case, isn't it?

Mr. Sweatman: That is a case under the Spanish treaty.

Mr. Bulkley: All that was decided in that case in this connection was that the depositions as required by the Act on the part of the accused—they say that had been in the 187th, in referring to it—

Mr. Miller: Well, they were before the Supreme Court in that case.

Mr. Bulkley: They construed it that they were not admissible.

Mr. Miller: Well, after all, that was an appeal to the Supreme Court of the United States in a habeas corpus case.

Mr. Bulkley: No, but they are construing their own opinion.

The Commissioner: On habeas corpus they do not go into questions of fact or as to the sufficiency of the evidence, but whether it was competent evidence at all.

Mr. Miller: It is the method of proof.

The Commissioner: Yes.

Mr. Miller: They could not review any testimony there of the Commissioner.

Mr. More: Under the habeas corpus, couldn't they review the discretion of the Commissioner?

Mr. Miller: Oh, no.

Mr. More: I should think they could.

Mr. Miller: In what respect?

Mr. More: If he abused it, that is all.

Mr. Miller: Oh, well, all discretion is subject to that, but I mean where the competence within the field of his discretion, that he might have decided either way.

Mr. Bulkley: Now, there is a recent case, the Charlton case, and that case is quite enlightening upon these issues about the admissibility of evidence. In that case they raised four objections. The first was, that the evidence of insanity of the accused was offered and excluded. They undertook to show that he could not be extradited because at the time he was alleged to have committed the crime of murder in Italy he was insane, and this is what the courts say about that:

"There is not and cannot well be any uniform rule determining how far an examining magistrate should hear the witnesses produced by an accused person. The proceeding is not a trial. The issue is confined to the single question of whether the evidence for the state makes a *prima facie* case of guilt sufficient to make it proper to hold the party for trial. Such committing trials, if they may be called trials in any legal sense, are usually regulated by local statutes. Neither can the courts be expected to bring about uniformity of practice as to the right of such an accused person to have his witnesses examined, since if they are heard, that is the end of the matter, as the ruling cannot be reversed.

"In this case the magistrate refused to hear evidence of insanity. It is claimed that because he excluded such evidence, the judgment committing appellant for extradition is to be set aside as a nullity, and the accused set at liberty. At 184 most the exclusion was error, not reversible by habeas corpus. To have witnesses produced to contradict the testimony for the prosecution is obviously a very different thing from hearing witnesses for the purpose of explaining matters referred to by the witnesses for the government. This distinction was taken by Mr. Justice Washington in the case of the United States v. White, 2 Wash. C. C. 29, Fed. Cas. No. 16,685, when he said:

"Generally speaking, the defendant's witnesses are not examined upon an application to bind him over to answer upon a criminal charge. The defendant's witnesses are never sent to the grand jury, except where the attorney for the prosecution consents thereto. But in this incipient stage of the prosecution, the judge may examine witnesses who were present at the time when the offense is said to have been committed, to explain what is said by witnesses for the prosecution; and the cross-examination of the witnesses for the prosecution is certainly improper."

Mr. Bulkley; Now, that is quoted from that decision of Justice Washington, quoted with approval. Then they go on to say:

"We therefore conclude that the examining magistrate did not exceed his authority in excluding evidence of insanity. If the evidence was only for the purpose of showing present insanity by reason of which the accused was not capable of defending the charge of crime, it is an objection which should be taken before or at the time of his trial for the crime, and heard by the court having jurisdiction

of the crime. If it was offered to show insanity at the time of the commission of the crime, it was obviously a defense which should be heard at the time of his trial, or by a preliminary hearing in the jurisdiction of the crime, if so provided for by its laws. By the law of New Jersey, insanity as an excuse for crime is a defense, and the burden of making it out is upon the defendant. *Graves v. State*, 45 N. J. L., 203, 4 Am. Crim. Rep., 386; *State v. Maiini*, 78 N. J. L., 339, 341, 74 Atl., 526, 20 Ann. Cas., 204; *State v. Peacock*, 50 N. J. L., 34, 36, 11 Atl., 270. A defendant has no general right to have evidence exonerating him to go before a grand jury, unless the prosecution consents, such witnesses may be excluded. 1 Chitty Crim. Law, 318; *United States v. White*, supra; *Republica v. Shaffer*, 1 Dall., 236, 1 L. Ed., 116; *United States v. Palmer*, 2 Cranch, C. C., 11, Fed. Cas. No. 15,989; *United States v. Terry*, 39 Fed., 355, 362."

Mr. Bulkley: The reasons that they set forth there are more enlightening, perhaps, than the real decision. They approve the doctrine laid down by Mr. Justice Washington, that the only evidence that the defendants can put in in a case of this character, or that it is proper for them to put in, is not evidence denying what the witnesses for the prosecution have stated, because it would raise an issue of fact, that would be proper before a jury on a trial, but evidence of witnesses that explain the circumstances which have been testified to by the witnesses for the prosecution; that that is the character of evidence that may be heard by the Commissioner in a case like this; that depositions cannot be heard, has been decided by the Supreme Court in the cases you have, and I merely call your attention to this case as being a very recent case by the Supreme Court and as showing the line.

Mr. Miller: What was the case, a case of habeas corpus?

Mr. Bulkley: The Charlton case.

Mr. Miller: Was that habeas corpus, too?

Mr. Bulkley: Yes.

The Commissioner: That is the only way that it could be in the Supreme Court, I imagine.

Mr. Bulkley: That is the only way they could get to the Supreme Court, by habeas corpus?

Mr. Miller: Yes, but it don't enlarge the question or the decision of the Supreme Court to say you cannot get up there any other way. You can't get up there in a discretionary manner.

But that does not mean that the officer don't have discretion. You can't get light on what the officer's discretion is where you are seeking to review it, as a matter of right. Habeas corpus don't touch it, and it is not true that the remarks of a court can be more enlightening than a decision. The Supreme Court of the United States has said that the opinion is worth nothing except for the point of the decision—except for its own decision.

Mr. Bulkley: I do not cite the remarks of the court as a decision.

Mr. Miller: Why, you said they were more enlightening.

Mr. Bulkley: I said it is the views of the Supreme Court as to their methods of procedure, and how they looked upon the matters here, and I still say so—it would not make any difference how many wit-

nesses the defense brought here to contradict the testimony
185 of witnesses for the prosecution, they couldn't try that out
here. That would raise an issue for the jury to pass upon
on the trial. The question is whether the prosecution has made a
sufficient showing—has shown sufficient evidence to show probable
cause for holding the man for action by the grand jury and trial.

The Commissioner: Well, on motion for leave, as I understand
it to be, to take depositions in advance, I believe I will have to be
guided by this case in the 136 Supreme Court of the United States
at page 336, where they say:

"The only point raised on behalf of Oteiza which we deem it im-
portant to notice is his offer to introduce in evidence before the Com-
missioner, on his own part, certificates, made by public officers in
Cuba, as to the existence of certain facts, and also certain copies of
papers, and certain ex parte depositions in writing taken in Cuba
before a notary public; all of which were sought to be made evidence
under certificates made by the consul general of the United States
at Havana, certifying that the papers were properly and legally au-
thenticated so as to entitle them to be received 'in the tribunals of
Cuba as evidence in defense of a charge of embezzlement, and as evi-
dence in defense of said charge upon a preliminary hearing before
a committing magistrate, and as evidence in defense of said charge
in extradition proceeding upon a hearing before a competent magis-
trate, and especially as evidence in all the cases enumerated, where
said charge of embezzlement is made against Don Luis de Oteiza y
Cortes.'

"It is supposed that these documents were admissible in evidence
by virtue of the provision of section 5 of the act of August 3, 1882,
c. 378, 22 Stat. 216, which reads as follows: 'Sec. 5. That in all
cases where any depositions, warrants, or other papers, or copies
thereof, shall be offered in evidence upon the hearing of any extra-
diction case under title sixty-six of the Revised Statutes of the United
States, such depositions, warrants and other papers, or copies thereof,
shall be received and admitted as evidence in such hearing for all
the purposes of such hearing, if they shall be properly and legally
authenticated so as to entitle them to be received for similar purposes
by the tribunals of the foreign country from which the accused
party shall have escaped, and the certificate of the principal diplo-
matic or consular office- of the United States, resident in such foreign
country, shall be proof that any deposition, warrant or other paper,
or copies thereof, so offered are authenticated in the manner required
by this act.' "

Mr. Bulkley: Exactly the same character as offered by the prosecu-
tion, as the prosecution offers under the statute offered by the de-
manding government. The Supreme Court says:

"We are of the opinion that section 5 of the act of August 3,
1882, applies only to papers or copies thereof, which are offered in
evidence by the prosecution to establish the criminality of the per-
son apprehended; and that it does not apply to documents or deposi-
tions offered on the part of the accused, any more than did the pro-
visions of section 5271 of the Revised Statutes, either as originally

enacted or as amended by the act of June 19, 1876, c. 133, 19 Stat. 59.

"This view was held by Judge Brown, in the District Court for the Southern District of New York, March, 1883, in *In re Wadge*, 15 Fed. Rep. 864. In that case, the Commissioner had refused to adjourn the proceedings before him in order to enable the accused to procure depositions from England, to establish an alibi," etc.

In that case the Commissioner refused to adjourn the proceedings to enable the counsel to procure depositions from England to establish an alibi.

Mr. Miller: It is a question of right and not of discretion. It is not a question of discretion here, it was more a question of convenience, of speed, expense and everything of that kind, and I thought that very likely the demanding government might yield, inasmuch as they had exercised the privilege.

The Commissioner: Well, could such an agreement be made whereby the cross-examination of witnesses could be had? What do you say to that, Mr. Bulkley?

Mr. Bulkley: No, I do not think we have any authority to consent to any arrangement of that kind. This man can get a fair hearing in his own courts in Canada, if he goes back there; that is his place, not here.

Mr. Miller: Well, that is to be presumed, of course.

The Commissioner: Oh, yes.

The Commissioner: I think it would be a dangerous precedent for me to establish, gentlemen. That is not so very far away. If it was in England, and this case turned on the question that arose in the other case where they asked to take depositions in England, where it is across the ocean, it is a different matter. This is within a thousand miles of here, isn't it, gentlemen?

Mr. Bulkley: Yes, I think so.

Mr. Sweatman: About that, I should think, roughly speaking, yes.

Mr. Bonnar: It is about a thousand miles.

186 Mr. Miller: Of course that is true, and the only thing I suggested is, that it is a different question where you are speaking of our right to do that and of the discretion of the Commissioner to use these depositions in place of having the witnesses come here. He might have the discretion to do that, when he would not be compelled to do it, being a mere form of evidence, and if they had the opportunity of cross-examination by their own counsel. However, we will have to submit to the ruling of the Commissioner on it.

The Commissioner: Well, I believe that the testimony on behalf of the defendant, if they desire to offer such testimony, should be taken here in open proceedings.

Mr. Miller: Well, we contemplate offering testimony, if the Commissioner please.

The Commissioner: Now, on what date?

Then the matter will stand in its present condition until the 2nd day of November, at the hour of eleven A. M.

Whereupon, a continuance was here taken to 11:00 o'clock A. M., November 2, 1915.

UNITED STATES OF AMERICA,

Northern District of Illinois, City of Chicago, ss:

Before United States Commissioner Lewis F. Mason.

In the Matter of the Application for the Extradition of THOMAS KELLY.

Transcript of Proceedings.

The following is a stenographic transcript of the proceedings had and evidence introduced at the continued hearing of the above entitled cause, before his honor, Lewis F. Mason, United States Commissioner in Room No. 603 Federal Building, Chicago, Illinois, at 11 o'clock A. M., November 2nd, 1915, pursuant to continuance heretofore taken.

Present: Same counsel as before.

Mr. Miller: If the commissioner please, I desire to introduce certain objections—

The Commissioner: Has Mr. Kelly come in yet? I do not see him. I will send for him—I think he is upstairs.

Mr. Miller: Well, in the meantime can I go on with this, your honor?

186½ The Commissioner: Yes.

Mr. Miller: I desire to introduce certain objections to the showing made, to the evidence that is presented on behalf of the demanding Government, and I suppose I might defer that without any prejudice at all and take it up a little later?

The Commissioner: Oh, yes; you can take it up when he is called as a witness on behalf of the respondent.

Mr. Miller: Yes. Of course that don't displace my right to object now?

The Commissioner: Oh, no.

Mr. Miller: Very well.

Whereupon the respondent, to maintain the issues on his part, introduced the following evidence, to wit:

JAMES V. LARKIN, a witness called on behalf of the respondent, being first duly sworn, testified as follows:

Direct examination by Mr. Miller:

Q. Will you please state your name, age and occupation?

A. James V. Larkin.

Q. And you are a lieutenant of police of the City of Chicago, Mr. Larkin?

A. I am a police officer ranking as lieutenant of police.

Q. And how long have you held that rank—for some time?

A. As lieutenant of police it is going on eleven years next March.

Q. It will be eleven years next March?

A. No, eleven years last March.

Q. All right, eleven years last March.

A. Yes.

Q. Did you on the first of October, 1915, arrest and take into custody the respondent here, Mr. Thomas Kelly?

The Commissioner: Just a moment. Mr. Miller, hadn't the respondent ought to be here?

Mr. Miller: Maybe for the evidence, yes.

The Commissioner: Yes. I have sent a deputy marshal after him, so as to have him here.

Mr. Miller: I had forgotten for the moment that he was not here, your Honor.

The Commissioner: Thomas Kelly here came into the court room.

Mr. Miller:

187 Q. Lieutenant Larkin, you say that you—I just want to repeat this—you reside in the City of Chicago and are a police officer of the City of Chicago?

A. Yes.

Q. Ranking as lieutenant?

A. Yes.

Q. Did you, on the first of October, 1915, arrest and take into custody the respondent, Mr. Thomas Kelly, who is here?

A. I did.

Q. That was on the first of October, was it not?

A. About the first of October, I think.

Q. Where was Mr. Kelly when you arrested him?

A. He was in the lobby of the Blackstone Hotel.

Q. He had arrived there that morning, had he, as you understood it?

A. I don't know what time he arrived there, I couldn't tell you what time he arrived.

Q. Well, had you any information about it?

A. I had information from the Thiel Detective Agency, yes, sir.

Q. How is that?

A. I go—my information as to his whereabouts from the Thiel Detective Agency.

Q. Was he in company with Mr. Phippen, his counsel at that time?

A. He was talking to some gentlemen and I found out afterwards that his name was Mr. Phippen.

Q. How did it come about, Lieutenant, that you so arrested Mr. Kelly?

Mr. Bulkley: Just a moment. I object to this. I don't see the purpose of this.

The Commissioner: What is the purpose, Mr. Miller?

Mr. Miller: My purpose, if the commissioner please, is to show that he was arrested without any warrant by a police officer of the City of Chicago and taken into custody, and the circumstances in connection with that, and his being brought up here by the police officer without any warrant and without any authority, and I want to show what the authority was and the circumstances in connection with it.

The Commissioner: Does that have any bearing on this issue here, Mr. Miller?

Mr. Miller: I think it does, if the commissioner please, or I would not offer it.

The Commissioner: Yes.

Mr. Miller: Of course it will be for the commissioner to determine afterwards whether it has any bearing on this or not.

The Commissioner: Yes.

Mr. Miller: But that is my position with respect to it, your honor.

The Commissioner: Yes.

Mr. Bulkley: I object to it on the ground that if it were conceded that all that had happened, that it would not cut any figure here, and that it would not have any bearing upon the issue that we are trying here.

The Commissioner: That is the way I view it now, Mr. Miller. However, if you want to make a record on it, you may proceed.

Mr. Miller: I do.

The Commissioner: You may make your statement and let it go in as testimony.

Mr. Miller: I don't know all the facts. I can get the facts better, I think, by asking the witness.

The Commissioner: Very well; make it as brief as possible, however.

Mr. Miller: Yes, I will.

The Commissioner: In your letter to me of yesterday you asked for copies of telegrams.

Mr. Miller: Yes.

The Commissioner: Very well.

Mr. Miller: Shall I proceed?

The Commissioner: Yes.

Mr. Miller:

Q. Now, go on, Lieutenant, and state the circumstances under which you arrested him—you can state them better than I

A. Why I got a telegram in the evening about four o'clock, I can't remember exactly—

Q. That would be the evening of the last of September, would it, Lieutenant?

A. Well, I think it was about the first of October or the last of September, I didn't look up the date, however; but I think it was around the first of October, I think so, to the best of my knowledge, to arrest one Thomas Kelly, giving his height, age and description.

Q. Have you the telegram?

A. Yes, sir; I will read it for you.

Q. Just let me see it.

A. (Witness producing telegram and handing same to Mr. Miller.)

188 The Commissioner: You may not want it in the record.

Mr. Miller: Yes. I think I do want it in the record, if the commissioner please.

The Commissioner: Very well.

Mr. Miller: I will have it marked.

The Commissioner: Yes, mark it.

Mr. Miller: This is the telegram——

The Witness: That is the original.

Mr. Miller: That may be marked Respondent's Exhibit 1.

The Commissioner: Let it be so marked.

Which said telegram, marked Respondent's Exhibit 1, is in the words and figures as follows, to-wit:

RESPONDENT'S EXHIBIT 1.

18wn in 336pm 56 4 ex rush

WINNIPEG, MAN., Oct. 1, 1915.

Chief of Police, Chicago:

Arrest and hold thomas Kelly charge obtaining by false pretences one million two hundred and fifty dollars, warrant issued. Will most likely be pointed out to you. Description, age about 60, six ft. one hair and mustache dark, turning grey, brown eyes. Was a prominent contractor here extradition proceedings will follow.

J. V. McRAE,

Commissioner of Police, Manitoba.

Mr. Miller:

Q. You say you got that about what time?

A. Oh, I got that in or about three or four o'clock in the afternoon.

Q. Well, had you already arrested Kelly before that?

A. No, sir.

Q. Which telegram are you showing me?

A. I am showing you this one which is marked "Respondent's Exhibit 1"? That is the original.

Q. Well then, go on and state what you did?

A. It says there to see the Thiel Detective Agency, which I did. I went down there——

Q. Wait a moment—you what?

A. I think it is in the telegram to see the Thiel Detective Agency.

Q. Not in this telegram—I don't see anything?

A. Don't you?

Q. No, it maybe.

A. It says, "He will most likely be pointed out to you." They had called up in the meantime.

Q. Who had called up?

A. The Thiel Detective Agency had called up.

Q. Is that name spelled T-h-i-e-l?

A. Well, I think that is how it is spelled, but I really don't know how it is spelled.

Q. They had called up here in Chicago?

A. Yes, sir.

Q. And what did they say to you?

A. They wanted to know did we have a letter in reference to a man named——

Q. Kelly?

A. —in reference to a man named Kelly, wanted in Winnipeg, so then the telegram just came in a few minutes afterwards.

Q. And then what did you do?

A. I went down to the Thiel Detective Agency which was in the Monadnock Building.

Q. Yes.

A. And met one of the representatives there and we proceed to the Blackstone Hotel.

Q. You nod your head?

The Commissioner: Yes.

Mr. Miller: That is "Yes," is it?

A. Yes.

Q. And what did you do, Lieutenant?

A. He told me that he knew the operator that had Mr. Kelly in charge—that is the operator that was shadowing him.

Q. You don't mean that he had him under arrest or anything of that kind, do you?

A. I am just telling you, the operator that was shadowing Mr. Kelly.

Q. Yes.

A. You know how they do detective business without asking me, Mr. Miller.

The Commissioner: No—go on.

A. We waited around the Blackstone Hotel for probably half an hour or an hour, or maybe longer, until we seen this operator. He walked out on the sidewalk and I followed him out—Detective O'Brien was with me, and he talked to this operator—this Chicago man talked to this Winnipeg operator of the Thiel Detective Agency, and he asked him where Mr. Kelly was and he came in and pointed him out to me.

Q. And then what?

A. We took Mr. Kelly down to the Detective Bureau.

Q. Did he demand any warrant or process?

A. He did.

Q. What did he say?

A. He wanted to know what authority I had.

Q. And what did you say, if anything?

A. I told him that I had the authority in my pocket, that I was going to take him, and I took him, and detained him until we got the proper information, which is customary from the department.

Q. You told him that you were going to take him and you took him?

A. Yes.

Q. Did you tell that you would take him by force if he resisted?

A. I did.

Q. You told him that you had the authority in your pocket?

A. Yes.

Q. You didn't have any warrant, did you?

A. I didn't show it to him.

Q. Well, did you have any?

A. I had that telegram.

Q. That was all, was it?

A. That is all.

Q. You had no warrant at all, had you?

A. No, sir.

Q. And then you took him where?

A. Detained him at 179 North La Salle Street, Chicago Detective Bureau, City of Chicago, Cook County, State of Illinois.

Q. That is in the City Hall, is it?

A. No, sir, that is at number 179 North La Salle street. He was detained there.

Q. Oh, yes—he was detained there?

A. Yes.

Q. How long did you keep him there?

A. He was there until the next morning when I turned him over to the United States Marshal.

Q. Where did you do that?

A. How is that?

Q. Where did you do that, where did you turn him over to the United States Marshal?

A. He was turned over to the United States Marshal right in this building here.

Q. In the office or in the room of the United States Commissioner, was he?

A. It was on the eighth floor—Officer O'Brien can explain about that, he had him in charge.

Q. You were not here at that time, were you?

A. I was here at that time, but I didn't have him in charge.

Q. I see, but you were there?

A. Yes.

Q. Was that done in the office of the United States Commissioner, Mr. Mason?

A. I couldn't tell you that, sir.

Q. You couldn't tell what room it was?

A. No.

Q. Do you know the number of it?

A. I couldn't tell you the number of it; Sergeant O'Brien will explain that.

Q. Yes. That was the next day after you took him?

A. The next morning.

Q. The next morning after you took him?

A. Yes.

Q. What time of day was it, Lieutenant, when you went up to the Blackstone Hotel?

A. Oh, it must have been between four or about four or four thirty, something like that, I couldn't tell you exactly the time it was.

Q. In the afternoon, was it?

A. Yes, sir.

Q. The paper that I now show you, did you have to do with it—Do you know what it is (handing paper to witness)?

A. This one here?

Q. Yes. It is typewritten and it purports to be a telegraph message from O'Brien, the Chief of Detectives?

A. That is information for the Commissioner in the beginning. It is customary for us to arrest on these warrants when they come in—

Q. Well, no matter about that, and I move to strike that out.
The Commissioner: Yes.

The Witness: And it is customary for me to wire information.

190 Mr. Miller:

Q. When was that sent, Lieutenant?

A. That was sent immediately after he was brought in, Mr. Miller.

Q. That was sent immediately after he was brought into your station, was it?

A. Yes, sir.

Q. And before you brought up to the Government building here?

A. Yes, sir.

Mr. Miller: We will offer that in evidence, if the Commissioner please.

The Commissioner: Carbon copy of a telegram sent, apparently?

Mr. Miller: Yes. Mr. O'Brien is here, the Chief of Detectives, and I will show it to him.

The Witness: No.

Mr. Miller: What is that?

The Witness: The officer is here, his name is O'Brien, but he is not the Chief of Detectives.

Q. I beg your pardon?

A. I say the officer is here and his name is O'Brien, but the Chief of Detectives is not here.

Q. Oh, he is not here?

A. No.

The Commissioner: He is a different O'Brien?

A. Yes.

Mr. Miller: I see. Did you send this message?

A. I dictated it.

Q. And you know it was sent, do you?

A. Yes, sir.

Mr. Miller: I will ask that this be marked Respondent's Exhibit 2.

The Commissioner: Let it be marked.

Which said telegram was marked Respondent's Exhibit 2 and is in the words and figures as follows, to-wit:

190½ RESPONDENT'S EXHIBIT 2.

CHICAGO, ILL., Oct. 1st, 1915.

To J. C. McRae, Commissioner of Police, Winnipeg, Manitoba:

Wire name complainant, amount involved, date of crime and all other data for fugitive warrant. Kelly under arrest. Is fighting. Wire immediately tonight. Unless information at hand by eight Saturday morning Kelly will be discharged by Court. Rush.

P. D. O'BRIEN,
Chief of Detectives.

Mr. Miller: That is all.

The Commissioner: Do you want to cross-examine the witness, Mr. Bulkley?

Mr. Bulkley: No.

The Commissioner: Very well.

Mr. Bulkley: I want to move to strike out all of this testimony as being absolutely immaterial to any issue that we are trying here.

The Commissioner: The ruling is reserved.

Mr. Bulkley: Very well.

Mr. Miller: I think that is all, Lieutenant.

(Witness excused.)

Mr. Miller: Is Detective O'Brien here?

The Witness: Yes, sir.

Mr. Miller: Take the stand, Mr. O'Brien, please.

WILLIAM P. O'BRIEN, called as a witness on behalf of the respondent, being first duly sworn, testified as follows:

Direct examination by Mr. Miller:

Q. Your name is what?

A. William P. O'Brien.

Q. And what is your business or occupation?

A. Police officer.

Q. Police officer of the city of Chicago?

A. Yes sir.

The Commissioner: What is your address, Mr. O'Brien?

A. 6418 Drexel Avenue.

191 Q. You were a police officer of the city of Chicago on the first day of October, 1915, were you?

A. Yes sir.

Mr. Bulkley: If the commissioner please, I make the same objection to the testimony of this witness, if it is along the same line.

The Commissioner: Yes, the same objection.

Mr. Miller: That is understood.

The Commissioner: Yes.

Mr. Miller:

Q. Did you have to do with the arrest and the taking into cus-

tody of Mr. Thomas Kelly, the respondent here, on the first day of October, by Lieutenant Larkin?

A. I was there.

Q. You were there with Lieutenant Larkin?

A. Yes, sir.

The Commissioner: Now, Mr. Miller, may I make a suggestion right now?

Mr. Miller: Yes.

The Commissioner: And that is, that the respondent was released from custody.

Mr. Miller: Yes, I understand, but the fact is, he has been kept in custody, he has never been released from custody?

The Commissioner: He was formally released on the occasion of the filing of the new complaint.

Mr. Miller: How was he released—there was nothing said, was there?

The Commissioner: Oh, yes.

Mr. Miller: Was there?

The Commissioner: Yes; the record shows that he was discharged on that occasion, and that he was re-arrested upon a new warrant.

Mr. Miller: Instantaneously?

The Commissioner: Instantaneously.

Mr. Miller: Yes.

The Commissioner: And his counsel, Mr. Forrest, waived the reading of the new warrant.

Mr. Miller: Yes, I remember that he waived the reading of the new warrant.

The Commissioner: Yes.

Mr. Miller: It was all done instantaneously?

The Commissioner: Oh, yes.

Mr. Miller: It was all done instantaneously, whatever the record shows?

The Commissioner: Oh, yes.

Mr. Miller:

Q. Was it you that on the second of October took Mr. Kelly up to this building?

A. Yes sir.

Q. What time of day was that done?

A. What time of day was it done?

Q. Yes.

A. Why, it was before nine o'clock, or it was about nine o'clock.

Q. It was about nine o'clock?

A. Yes.

Q. Wasn't it about ten o'clock, Mr. O'Brien?

A. Wasn't it about ten o'clock?

Q. Yes, isn't that correct?

A. No, it was about nine.

Q. You say it was about nine o'clock?

A. Yes.

Q. What did you do with him here?

A. I took him up to the office of Mr. Mason:

Q. You took him up to the office of Commissioner Mason?

A. Yes.

Q. By whose directions or instructions, or by what authority did you do that?

A. None.

Q. What is that?

A. I didn't get any instructions from anybody, except that it is the custom——

Q. Well, you do not carry men around to the United States Commissioner's office without any instructions, do you, Mr. O'Brien?

A. We do in cases of this kind, yes, sir; the Commissioner has the jurisdiction.

Q. What is that?

A. I say we do in cases of this kind; the Commissioner has the jurisdiction.

Q. That is you, of your own will, and on your own impulse or motion brought him up to the United States Commissioner's office, did you?

A. It is just the same as bringing him into the Municipal Court——

Q. No, don't tell me anything about the Municipal Court.

A. All right, sir.

Q. Don't tell me anything about that, but just tell me what you did, Mr. O'Brien.

A. I brought him up here?

192 Q. You brought him up here?

A. Yes.

Q. Without the direction of anybody, did you?

A. (No answer by the witness.)

Q. Is that true, Mr. O'Brien?

A. I didn't have any instructions or any directions that I know of.

Q. Did Lieutenant Larkin come with you?

A. No, sir, he left before I did.

Q. He left before you did?

A. Yes, he left before I did; he left about half past eight.

Q. He left for the same place, did he?

A. Yes, sir.

Q. And you found him up here, did you?

A. I found him up here, yes sir.

Q. And you brought him up here as a police officer of the City of Chicago, did you?

A. What is that?

Q. I say you brought him up here as a police officer, of the City of Chicago?

A. Yes sir.

Q. Is Lieutenant Larkin your superior officer?

A. Yes sir.

Q. And you spoke to nobody about bringing him up here, did you, Mr. O'Brien?

A. You say I talked with nobody?

Q. Yes, did you talk with anybody about bringing him up here?

A. I talked with the men at the Bureau there.

Q. With the men at the Bureau?

A. Yes.

Q. What men at the Bureau?

A. Well, I talked to Lieutenant Larkin.

Q. You talked with Lieutenant Larkin, the gentleman who has just testified here?

A. Yes.

Q. What was the talk?

A. What was it about do you mean?

Q. Yes, what was the talk about?

A. The talk was about the method of procedure that we would go through the next day.

Q. Did you talk about bringing him up here?

A. Yes sir.

Q. With Lieutenant Larkin at that time?

A. Yes sir.

Q. You talked with Lieutenant Larkin at that time about bringing him up here?

A. Yes sir.

Q. Was it in pursuance of that talk that Lieutenant Larkin—or rather, was it in pursuance of that talk with Lieutenant Larkin that you brought him up here?

A. Yes sir.

Q. What did you do with him when you brought him—when you brought him up here?

A. I turned him over to one of the deputy marshals of the United States.

Q. You turned him over to one of the United States deputy marshals here?

A. Yes sir.

Q. Do you know who it was?

A. I don't know who it was, no sir, I didn't know what his name was.

Q. Well, how did you happen to do that?

A. How did I happen to do that?

Q. Yes.

A. Well, that was the custom, that is the only reason that I know of.

Q. No, no, how did you happen to do that?

A. That was the custom.

Q. Was that all?

A. Just the custom.

Q. Did you have any warrant for his apprehension or detention?

A. No.

Q. You had no warrant for his apprehension or detention?

A. No.

Q. Was there any that you know of?

A. No, sir, there was not any when the arrest was made that I know of.

Q. There was not any when the arrest was made?

A. No, not that I know of.

Q. Or when the detention was made?

A. No, there was none that I know of, except what the wire says, that is all I know.

Q. Except what the wire says?

A. Yes.

Q. Well, the wire is not a warrant, is it?

193 A. No, it is not a warrant, except they said that they held a warrant.

Q. I beg your pardon?

A. Except they said they held a warrant.

Q. Who held the warrant?

A. I believe it said that the Canadian authorities did.

Q. The Canadian authorities where?

A. At Winnipeg.

Q. The Canadian authorities at Winnipeg?

A. Yes.

Q. But there was no warrant here, was there?

A. No, sir.

Q. There was no warrant in Chicago, was there?

A. No, sir.

Q. Did you know when you brought him up here that a proceeding was started or about to start for the procuring of a writ of habeas corpus?

A. No, sir.

Q. You didn't know anything about that?

A. No, sir.

Q. You didn't have the least idea about it, did you?

A. No, sir.

Q. Lieutenant Enright didn't tell you that, did he?

A. Who?

Q. Or Lieutenant Larkin, rather, he didn't tell you that, did he, Mr. O'Brien?

A. No, sir.

Q. Well, did you know it when you were up here in the Government building?

A. Yes, sir.

Q. You did know that there was a petition for a writ of habeas corpus out, did you?

A. The lawyers made the remark up there in the United States Commissioner's office.

Q. The lawyer made the remark in the Commissioner's office?

A. Yes.

Q. What lawyer was that?

A. I believe it was Mr. Barrett.

Q. Who is that?

A. I say I believe it was Mr. Barrett, I believe Mr. Barrett made the remark.

Q. Mr. Barrett?

A. Yes.

Q. Who was he?

A. One of his attorneys.

Q. Well, is he here?

A. I don't know.

Q. He was an attorney for whom, do you know?

A. Mr. Kelly.

Q. He was in the United States Commissioner's office that day when you brought him up here?

A. Yes, sir.

Q. And he said that there was a writ of habeas corpus out, did he?

A. I believe he said that he applied for one or that he was going to apply for one.

Q. What time was this, that Barrett said this?

A. What time was it?

Q. Yes, when Barrett said this.

A. Oh, it was after nine o'clock or something like that. I don't know exactly the time that it was, but it was something like that I think.

Q. It was after nine o'clock?

A. It was after nine o'clock, yes.

Mr. Miller: I think that is all.

The Commissioner: Any cross-examination?

Mr. Bulkley: No.

The Commissioner: Very well.

Mr. Bulkley: I make the same motion if the commissioner please, to strike out all of the testimony of this witness on the ground that it is not competent nor material or relevant to any issue that we are trying here.

Mr. Miller: I want to present to the—I stated to the commissioner when we were in here the last time that we desired time to procure some witnesses here, and I desire now to present some affidavits with respect to that, and I don't know whether I should take the time to read them or not.

The Commissioner: Affidavits with respect to the absence of the witnesses?

Mr. Miller: Yes.

The Commissioner: Well——

Mr. Bulkley: I object to that, if the commissioner please, as absolutely immaterial.

The Commissioner: These are affidavits used as a basis for request for a continuance?

Mr. Miller: Yes, that is right.

194 Mr. Miller: And also the renewed request that we may be permitted now to take depositions and have the time to do it, conceding that having done what we could to get these witnesses here, that we may have the right now to take their depositions and present that question.

The Commissioner: Well, let me ask you, Mr. Miller, before you read the affidavits.

Mr. Miller: Yes.

The Commissioner: Is there any authority for that, Mr. Miller?

Mr. Miller: I have not any decision that I can put my hand upon, and I don't know of any authority against it. Under the Act of Congress of 1882 and the sections of the Revised Statutes Applicable—they do not say anything against the use of affidavits.

The Commissioner: The Supreme Court does not countenance it in any way, but they rather frown upon it, and they do so in very decided language in the only case that they mention it.

Mr. Miller: You have reference to the Whitaker-Wright case, have you?

The Commissioner: No.

Mr. Miller: Or the Oteiza case?

The Commissioner: Yes, and in the — case they say it is not competent.

Mr. Miller: Well, I offer these affidavits in support of that motion.

The Commissioner: As a basis for a continuance to take depositions?

Mr. Miller: And for an opportunity to take the depositions of these witnesses that are named in the affidavit.

The Commissioner: I will let you file the affidavits for the purpose of your record, Mr. Miller.

Mr. Miller: Very well.

The Commissioner: And as I now view it, I am disposed to hold against you on any deposition on behalf of the respondent.

Mr. Miller: Under any circumstances?

The Commissioner: Yes, under any circumstances.

Mr. Miller: Yes, I understand that to be the question, if the commissioner please.

The Commissioner: And the affidavits could not change the law or change my view of it.

Mr. Miller: Very well. But, of course, I can make my application, can I?

194½ The Commissioner: Oh, yes.

Mr. Miller: And present my showing upon it?

The Commissioner: Oh, yes.

Mr. Miller: And take your honor's ruling?

The Commissioner: Oh, yes.

Mr. Miller: Very well; I will have these affidavits marked, if the commissioner please.

The Commissioner: Yes. Let me ask you. Do these affidavits set up what they would testify to if they were here?

Mr. Miller: No.

The Commissioner: Very well.

Mr. Miller: These witnesses are witnesses, however, whose testimony is here for the Government, and it is further along the same line, to repeat their evidence and as to things that they are indefinite

about and not complete about, and I want to complete their testimony, such as if I had the privilege of cross-examination.

Making their evidence completer and clearer, and upon certain things that are lacking and give a wrong import.

The Commissioner: There is no process by which you can compel the appearance of these witnesses in this country, is there?

Mr. Miller: No, these witnesses are all Winnipeg witnesses whose alleged depositions appear in the showing presented by the demanding Government.

The Commissioner: Very well.

Mr. Miller: And I will ask that these affidavits be marked as Respondent's Exhibits 3 and 4.

The Commissioner: Let them be marked.

Which said depositions were marked as Respondent's Exhibits 3 and 4, respectively, and are in the words and figures as follows, to wit:

RESPONDENT'S EXHIBIT 3.

Before Lewis F. Mason, Esq., United States Commissioner, &c.

In the Matter of the Application for the Extradition of THOMAS KELLY under the Treaties Between the United States and Great Britain.

195 I, Mowbray MacDonnell Perdue, of the City of Winnipeg, in the Province of Manitoba, Barrister-at-law, Make Oath And Say:

1. That I am a Barrister-at-law in the employ of William Andrews Travers Sweatman, associate counsel of Edward Anderson, K. C., Solicitor for the defendant Thomas Kelly, and as such have a knowledge of the facts by me herein *by me disposed to*.

2. That on Thursday the 28th day of October, A. D. 1915, I personally interviewed one Victor W. Horwood and handed to him a letter, a copy of which is hereto attached and marked Exhibit "A" to this my affidavit.

3. That at the said interview, after the said Horwood had read the letter above referred to, I asked him if he would go to Chicago to give evidence in the above matter, but the said Horwood refused, on the ground that he had already attempted to enter the United States for the purpose of undergoing an operation but that he had been refused entry at the border and returned to Canada and the said Horwood further told me that he would not again attempt to enter the United States as he would only be turned back at the border.

4. That on the aforesaid 28th day of October, A. D. 1915, I personally interviewed one William Salt and handed to him a letter, a copy of which is hereto attached and marked Exhibit "A" to this my affidavit, and that after the said Salt had read the said letter I asked him if he would go to Chicago to give evidence in the above matter, but the said Salt refused to go giving as his reason that he refused to go on personal grounds which he could not disclose.

5. During the course of this said interview I asked the said Salt if there was not some evidence not included in his *disposition* taken herein that he could give that would be favorable to the said Thomas Kelly, and he replied that probably there was; and further intimated that if he had been cross-examined probably there were facts that had not been touched upon in his said *disposition* and which might be favorable to Thomas Kelly.

6. That on the aforesaid 28th day of October, 1915, I personally interviewed one P. Gordon McTavish and handed to him a letter, a copy of which is hereto attached and marked Exhibit "A" to this my affidavit, and that after the said McTavish read the said letter I asked him if he would go to Chicago to give evidence in the above matter, which he consented to do upon the terms set out in said letter and which was agreed to.

7. That on Friday the 29th day of October, A. D. 1915, I again personally interviewed the said McTavish, when he refused to go to Chicago, only giving as his reason for changing his mind the fact that he refused on personal grounds which he could not disclose.

MOWBRAY M. PERDUE.

Sworn before me at the City of Winnipeg, in the Province of Manitoba, this 30th day of October, A. D. 1915.

[SEAL.]

J. W. MORRISON,
*A Notary Public in and for the
Province of Manitoba.*

(Jurat.)

October 27th, 1915.

William Salt, Esq., City.

DEAR SIR:

King vs. Thos. Kelly.

As you are doubtless aware I am acting for Mr. Kelly in the proceedings being taken against him by the Government of Manitoba, both civil and criminal. Your depositions have been filed at Chicago in support of the application now being made for the extradition of Mr. Kelly on certain criminal charges preferred against him arising out of the contracts for the new Parliament Buildings in the City of Winnipeg. As your evidence was taken *ex parte* no opportunity was given to Mr. Kelly or his counsel to cross-examine you, and I desire to have you attend at Chicago and give oral evidence before the Commissioner. I do this because there are many facts in your knowledge in favor of Mr. Kelly which were not disclosed in your depositions, possibly because you were not asked to give them.

The hearing is set to take place in Chicago before Commissioner Mason in the Federal Building on November 2nd at either 10 or 11 A. M. I therefore beg to request that you will be good enough to make the necessary arrangements to proceed to Chicago for the purpose of giving evidence at the above time and place. I am prepared to pay your expenses and a reasonable compensation for the time that you may be absent.

This letter will be presented to you and you are requested to give an answer to the bearer.

Yours truly,

E. ANDERSON.

Endorsed on the back thereof: In the Matter of the Application for the Extradition of Thomas Kelly Under the Treaties Between the United States and Great Britain. Affidavit of M. M. Perdue. Edward Anderson, K. C., Winnipeg, Man.

RESPONDENT'S EXHIBIT 4.

Before Lewis S. Mason, Esq., United States Commissioner, &c.

In the Matter of the Application for the Extradition of THOMAS KELLY under the Treaties Between the United States and Great Britain.

I, Edward Anderson, of the City of Winnipeg, in the Province of Manitoba, King's Counsel, make oath and say:

1. That I am of Counsel for the above named Thomas Kelly.

2. That hereunto annexed and marked "A" is a true copy of a letter written by me to the Honorable A. B. Hudson, Attorney-General for the Province of Manitoba, and hereunto annexed and marked "B" is Mr. Hudson's reply to my letter; and hereunto annexed and marked "C" is a true copy of a letter written by me in answer to Mr. Hudson's letter Exhibit "B."

3. That I have had no answer to my letter to Mr. Hudson, copy of which is marked Exhibit "C."

4. That no notice was given to me of the taking of the depositions of witnesses for the Crown in connection with the extradition of the said Thomas Kelly, although the Attorney-General and Counsel representing him knew that I was acting for the said Thomas Kelly, and knew my address and place of business, and would have no difficulty in notifying me if they so desired, and I had no knowledge of the taking of depositions other than some general statements which I saw in the newspapers which led me to believe that Mr. Kelly's counsel would not be permitted to cross-examine the witnesses whose depositions were being taken.

E. ANDERSON.

Sworn before me at the City of Winnipeg, in the Province of Manitoba, this 30th day of October, A. D. 1915.

[SEAL.]

A Notary Public in and for the
Province of Manitoba.

(Jurat.)

October 29th, 1915.

Hon. A. B. Hudson, K. C., Attorney-General, Winnipeg.

DEAR SIR:

Re King vs. Kelly.

I regret that there are certain statements in your letter with which I must take issue. In the first place, I am not acquainted with the circumstances under which Messrs. Horwood and Salt went to the United States, except in so far as statements which I have seen in the newspapers gives me that information, otherwise I am utterly and absolutely unaware of the circumstances under which they went there. Next, I was not given an opportunity of cross-examining the witnesses Messrs. Horwood, Salt and McTavish when their depositions were taken in the extradition proceedings, and I had previously asked for an opportunity of being present and cross-examining the witnesses. I did not know exactly the time when the depositions were to be taken; all I knew about it was the newspapers stated the depositions were being taken in camera and ex parte as no one had a right to cross-examine the witnesses. When I say that I had expressed a desire for an opportunity to cross-examine these witnesses when their depositions were being taken I refer to a conversation I had over the telephone with Deputy-Attorney Allen some considerable time before these depositions were taken. This occurred during the course of a conversation with Mr. Allen when I told him I was prepared to produce Mr. Kelly at any time for extradition proceedings in Minnesota. Some reference was then made to the depositions to be taken, and then I told Mr. Allen I would like to have an opportunity of being present so as to cross-examine the witnesses. If it was intended to give Mr. Kelly's counsel an opportunity of cross-examining the witnesses there was certainly no obstacle in the way of the Crown affording that opportunity, as you knew quite well that I was acting for Mr. Kelly, and your letter indicates that you were very familiar with my movements at the time, and the fact that no such opportunity was given is conclusive evidence in my mind that the Crown never intended giving it.

I am somewhat surprised at your reference to the action of the United States Immigration authorities in stopping Mr. Horwood at the border when he sought to return for the purpose of having a surgical operation, and the suggestion that you make that Mr. Kelly might be able to enlighten me as to the real instigators. I always had the impression that the real instigators must have been the present Provincial Government, as it did not appear to me that the Immigration authorities would be likely to take any notice of a suggestion made by any private individuals; not only that, but it always appeared to me that it would not be serving any purpose, either of the ex-ministers or of Mr. Kelly to have this action taken by the United States Immigration authorities.

So far as your suggestion that my associate counsel, Mr. W. A. T. Sweatman, was present at the examination of witnesses before the

Royal commission, and took part in the cross-examination, is concerned, you well know that at that time Mr. Sweatman was not retained or acting for Mr. Kelly, but he was then running as assistant counsel for the ex-ministers.

So far as your suggestion is concerned that I might have taken the opportunity for cross-examining the witnesses, as you know from the time that I came into the case I took the stand that the Royal Commission was ultra vires, and that Mr. Kelly should not take part in these proceedings in any shape or form, and that I have always maintained that attitude.

You also say in your letter that Messrs. Norwood, Salt and McTavish were all examined in the preliminary hearing of the ex-ministers here, and were examined by very able counsel. Now, if you mean to suggest by that that the Crown is willing that we should use these depositions, or such parts of them as are relevant, for our purposes in the extradition proceedings at Chicago, it no doubt would meet part of the difficulty of not being able to cross-examine these witnesses. I shall therefore be obliged if you will let me know at once if you will give this consent.

Yours truly,

(Jurat.)

WINNIPEG, Oct. 28th, 1915.

Edward Anderson, Esq., K. C., Barrister, Winnipeg.

DEAR SIR:

Re King vs. Kelly.

I have your letter of 27th inst. Your request seems to be an extraordinary one in view of the fact that Mr. Kelly is now being tried in Chicago. The duty of the Extradition Commissioner, as I understand it, is only to see that there is a prima facie case, and when Mr. Kelly is brought to trial here you will have a full opportunity of cross-examining all the witnesses. The request seems more extraordinary in view of circumstances with which you are familiar. Both Horwood and Salt were examined before the Mathers Royal Commission in Minnesota. You are acquainted with the circumstances under which both of these men went to the United States. Your present associate counsel, Mr. W. A. T. Sweatman, was present at their examination and took part in the cross-examination. The field of evidence then involved covered much the same ground as the charges now made against Mr. Kelly. You yourself might have taken the opportunity of cross-examining these men on behalf of Mr. Kelly at that time; you will recollect the date because it was immediately following their examination that the telegrams which we wished to get for evidence were burned in the office of the Great North-Western Telegraph Company here.

Messrs. Horwood, Salt and McTavish were all examined in the preliminary hearing of the ex-ministers here and were examined by very

able counsel; no doubt you have received copies of their depositions and are familiar with their whole story.

Although the statements of these witnesses for use in the present proceedings were taken *ex parte*, you knew when you left Chicago that the extradition proceedings were adjourned for the purpose of having these depositions taken. You did not then ask for an opportunity of being present and cross-examining the witnesses. You knew when you got back here, exactly the time when these depositions were being taken because it was published in all of the newspapers. No request was then made by you to be present at the examination.

There is another feature to the matter. About two months ago when Horwood sought to return to the United States for the purpose of having a surgical operation, he was stopped at the border by the United States Immigration Authorities and an order was eventually made prohibiting him from entering the States. This order was made at the instigation of someone unconnected with the present government of the Province of Manitoba; possibly your client might enlighten you as to the real instigators.

If any further reason were required I might mention that neither Horwood nor Salt are at present in the employ of the Manitoba Government.

Yours truly,

A. B. HUDSON,
Attorney-General.

(Jurat.)

October 27th, 1915.

Hon. A. B. Hudson, K. C., Attorney-General, Winnipeg.

DEAR SIR:

King vs. Kelly.

In connection with the extradition proceedings now pending in Chicago against Mr. Thomas Kelly, we desire to have Messrs. Horwood, Salt and McTavish attend at Chicago to give evidence on behalf of Mr. Kelly. As these witnesses are either in the employ of the Government, or under its control, I am applying to you to get an order from you permitting these men to go to Chicago. I am quite prepared to pay their expenses and reasonable compensation.

As you know the depositions of the above named witnesses is the principal evidence being used upon which to get extradition order, and as the depositions were taken *ex parte*, and without notice to Mr. Kelly, and without giving him any opportunity to have the witnesses cross-examined, and as these witnesses are possessed of much information which would be in favor of Mr. Kelly, we desire to have their oral evidence taken on his behalf on the extradition hearing.

As the hearing is fixed for the 2nd November it is important that I should get an immediate reply from you to this letter.

Yours truly,

Endorsed on the back thereof: In the matter of the Application for the extradition of Thomas Kelly under the treaties between the

United States and Great Britain. Affidavit of E. Anderson. Edward Anderson, K. C., Winnipeg, Man.

The Commissioner: Did they refuse to come?

Mr. Miller: They have refused, that is the purport of the application.

The Commissioner: But have they refused to come?

Mr. Miller: Yes, the application has been made.

The Commissioner: Yes.

Mr. Miller: It all shows in the affidavit; the application has been made for them to come here and their refusal, and application to counsel for the Government through the Attorney Generals—was it?

Mr. Sweatman: Yes.

The Commissioner: Well, I can't see that alters the legal situation, Mr. Miller.

Mr. Miller: Of course, in connection with the affidavits, I do not want to undertake to state their contents fully. They show for themselves.

The Commissioner: Yes.

Mr. Miller: They are presented, and they show for themselves, if the commissioner please.

The Commissioner: For the matter of the record then, leave is given to file the affidavit, and your motion, Mr. Bulkley, is to strike out?

Mr. Bulkley: Yes, I object to the leave and I move to strike them out.

Mr. Miller: And these have been marked as Respondent's Exhibits 3 and 4.

The Commissioner: Very well.

Mr. Miller: Now, if the commissioner please, I return to the objections to the evidence that is offered on behalf of the demanding Government, on the ground that this showing is not properly or sufficiently certified or authenticated so as to entitle the showing to be used in evidence here against the respondent under the requirements of the sections of the Acts of Congress Applicable.

The Commissioner: You refer now to the certificate of Frederick M. Ryder?

Mr. Miller: I do, in that, yes.

The Commissioner: Consul General for the United States at Winnipeg, Canada?

Mr. Miller: Yes, or three of them, and as to each respectively.

Mr. Bulkley: They are all alike.

The Commissioner: They are all alike?

Mr. Bulkley: Yes.

199 The Commissioner: Do they follow the form of the certificates in the Bingham case and the other cases here, Mr. Bulkley?

Mr. Bulkley. In the language of the statute.

The Commissioner: And that follow those certificates that have been passed on?

Mr. Bulkley: Yes.

The Commissioner: These certificates, Mr. Miller, have been passed upon by Judge Geiger.

Mr. Miller: Yes.

The Commissioner: Did they take that exception to the Supreme Court in the Bingham case, or did they abandon that?

Mr. Miller: Well, I don't know that they raised the question of the fact that it was signed by the Vice-Consul instead of the Consul.

The Commissioner: Well, that does not occur here.

Mr. Bulkley; No, that does not occur here.

Mr. Miller: Your honor overrules that?

The Commissioner: Well, unless you have something new to offer, something to point out, that I have not gone through already in a number of cases, if there is anything new?

Mr. Miller: I have not any authority additional; it is on the wording of the provisions of the certificate.

The Commissioner: Very well.

Mr. Miller: I have not any additional authority that I have in mind other than those your honor has suggested here.

The Commissioner: Very well.

Mr. Miller: Specifically the certificate of Ryder is that they are legally authenticated as to entitle them to be received in evidence for specific purposes before a tribunal in the Province of Manitoba. He does not certify that those papers would be received in evidence in the Province of Manitoba if they were presented to a court there and as I understand it, they would not be received in evidence if offered there.

The Commissioner: It raises a question of fact as to what the law is, then, in Canada?

Mr. Miller: Yes, it does.

It does in a way, but it also raises a fact that upon that law, that the certifying officer should certify that these so authenticated would be received—that these papers and documents so authenticated would be received, instead of the conclusion of law, so as to entitle them to be received.

The Commissioner: Overruled.

Mr. Miller: Now, I should like to offer upon this objection, some of the provisions of the Criminal Code of Canada upon the subject of preliminary examination before Committing Magistrates, which is the corresponding or equivalent proceeding to that which the commissioner is here taking and the sort of proceeding upon which documents of this kind would be offered.

The Commissioner: And not now already offered in evidence by the demanding Government?

Mr. Miller: Well, I have not looked to see whether they are or not.

The Commissioner: Very well.

Mr. Miller: I take it, Mr. Bulkley, that you have used, I presume, the Canadian publication there? There is another annotated book called Cruikshanks, isn't there, Mr. Bonnar?

Mr. Bonnar: Yes.

Mr. Miller: We have that also; but I take it this is the edition

published by authority up there, what we call down here published by the Government printer?

Mr. Bonnar: Yes, but there has been a change in the sections of the Criminal Code.

Mr. Miller: If there has been a change, why of course we will follow them. I will use this in place of the other.

Mr. Bulkley: Give us the numbers of the sections that you want to offer?

Mr. Miller: Yes I will. I had a memorandum here, but I think I can find it quicker than I can by taking the time to look up the memorandum, this is a better index.

Mr. Bulkley: Just give us the number of the sections that you want to offer.

Mr. Miller: Commencing with sections 668—as I take it, these sections are in Chapter 146, is that right?

Mr. Bulkley: The sections go right through, Mr. Miller.

Mr. Miller: Sections 668, 682—

Mr. Miller: Sections 683 and 684. Those are the sections relating to preliminary examination.

That the respective depositions here do not comply with the requirements that are there laid down for their use in the tribunals of the Dominion of Canada—I need not read these sections?

Section 668. Inquiry by Justice, in Manner Hereinafter Directed.—When any person accused of an indictable offence is before a justice, whether voluntarily or upon summons, or after being apprehended with or without warrant, or while in custody for the same or any other offence, the justice shall proceed to inquire into the matters charged against such person in the manner hereinafter directed. 55-56 —, c. 29, s. 577.

Section 682. Evidence for the Prosecution at Preliminary Inquiry.—When the accused is before a justice holding an inquiry, such justice shall take the evidence of the witness- called on the part of the prosecution.

2. The evidence of the said witness- shall be given upon oath and in the presence of the accused; and the accused, his counsel or solicitor, shall be entitled to cross-examine them.

3. The evidence of each witness shall be taken down in writing in the form of a deposition, which may be in form 19, or to the like effect.

4. Such deposition shall in the presence of the accused, and of the justice, at some time before the accused is called on for his defence, be read over to and signed by the witness and the justice.

5. The signature of the justice may either be at the end of the deposition of each witness, or at the end of several or of all the depositions in such form as to show that the signature is meant to authenticate each separate deposition. 55-56 V., c. 29, s. 590.

Section 683. Depositions May Be Taken in Shorthand.—Every

justice holding a preliminary inquiry shall cause the depositions to be written in a legible hand and on one side only of each sheet of paper on which they are written. Provided that the evidence upon such inquiry or any part of the same may be taken in shorthand by a stenographer who may be appointed by the justice and who, before acting, shall, unless he is a duly sworn official court stenographer, make oath that he shall truly and faithfully report the evidence.

2. Where evidence is so taken, it shall not be necessary that such evidence be read over to or signed by the witness, but it shall be sufficient if the transcript be signed by the justice and be accompanied by an affidavit of the stenographer, or, if the stenographer is a duly sworn court stenographer, by the stenographer's certificate that it is a true report of the evidence. (As enacted by 3-4 Geo. V., c. 13, s. 25.)

Section 684. Evidence for Prosecution to Be Read to Accused, and Address to Be Made to Him by the Justice.—After the examination of the witnesses produced on the part of the prosecution has been completed, and after the depositions have been signed as aforesaid, the justice, unless he discharges the accused person, shall ask him whether he wishes the depositions to be read again, and unless the accused dispenses therewith shall read or cause them to be read again.

2. When the depositions have been again read, or the reading dispensed with the accused shall be addressed by the justice in these words, or to the like effect:

"Having heard the evidence, do you wish to say anything in answer to the charge? You are not bound to say anything, but whatever you do say will be taken down in writing and may be given in evidence against you at your trial. You must clearly understand that you have nothing to hope from any promise of favor and nothing to fear from any threat which may have been held out to you to induce you to make any admission or confession of guilt, but whatever you now say may be given in evidence against you upon your trial notwithstanding such promise or threat."

3. Whatever the accused then says in answer thereto shall be taken down in writing in form 20, or to the like effect, and shall be signed by the justice and kept with the depositions of the witnesses and dealt with as hereinafter provided. 55-56 V., c. 29, s. 591.

Mr. Miller: Now, there are certain so-called depositions here. This objection that I have just stated, goes to each of the so-called depositions—there are certain of the depositions here that present incompetent testimony to which I beg to object, to those parts of the deposition, which goes beyond their authentication. It does not involve the question of their authentication, but would be made if the witnesses were here present before the commissioner.

The Commissioner: Yes.

Mr. Miller: I desire to object to the—of course this is without prejudice to the objection that I have just made or those that I have made to the depositions as a whole?

The Commissioner: I understand.

Mr. Miller: But, without waiving them at all, I present these.

The Commissioner: Yes.

201 Mr. Miller: Now, I desire to object to the entire deposition of John Allen.

The Commissioner: Can you give me the galley number that that appears on?

Mr. Miller: Yes, I can in a moment here.

The Commissioner: Very well.

Mr. Miller: 23 I think, first.

The Commissioner: Very well.

Mr. Miller: I object to his statement of the provisions of the Criminal law of Canada, because the book is here and is being used in evidence and is itself the best evidence of what the law of Canada is and what the provisions of the law are, and which the witness purports to state. I object to that portion of his deposition which is at the end of the galley I refer to and the beginning of the next, which purports to speak of public accounts committee—that is in the first deposition.

The Commissioner: I understand, yes.

Whereupon Mr. Miller here read from Page 74 as follows to-wit:

"The Public Accounts Committee of the Legislative Assembly of the Province of Manitoba is one of the select standing committees appointed by the Legislative Assembly of the Province of Manitoba, to examine and inquire into the public accounts of the Province of Manitoba for the year preceding the appointment of said committee, and also into all matters pertaining to the said public accounts."

Then he purports to give section 35 of the Legislative Assembly Act, and that is objected to on the ground that it is incompetent, that the proceedings of the Legislative Assembly, or a copy of the proceedings, are certified to, and a part of this evidence offered on behalf of the demanding Government which shows the appointment of—or which purports to show the appointment of that committee, and that the best evidence of the appointment—

The Commissioner: You object to this part, then, apparently, or to the words, "said public accounts committee to examines witnesses upon oath"?

Mr. Miller: I am coming to that.

The Commissioner: Yes.

Mr. Miller: But I first object to what precedes that, because the Legislative proceedings here, the proceedings of the Legislative Assembly here are certified to.

The Commissioner: That is merely recitive, I guess, anyway?

Mr. Miller: It may be. We do not need any recital if it is here, and is a recital of section 35, which is a section of the Legislative act—that is a creative act, as I understand it, and there is a fundamental law of the Province on that, and that is certified to and shows for itself, and I object to the statement that such a committee as the public accounts committee aforesaid forms any part of the legislative machinery of the Dominion form of Government, as incompetent.

The Commissioner: And as a conclusion I suppose?

Mr. Miller: And as a conclusion, yes.

And then the next expression of the opinion of the witness that

the evidence here disclosed in said deposition shows the crime of perjury aforesaid under the laws of Canada. The laws governing the crime of perjury, as I understand it, has been offered in evidence in the book on behalf of the demanding Government.

And this very question is the question that your honor, sitting here as a committing magistrate, is trying, and the evidence is here and the laws are here, and then besides, if as in some cases of fact, counsel under the law of a foreign country may testify, this particular conclusion is a conclusion of fact upon evidence, and I don't know of any law of any country under any circumstances that would permit counsel, learned in the law of a foreign country, to express an opinion upon—or to express a conclusion upon evidence in a case, so I object to that.

Now, I don't know whether I need go through all this evidence or not.

This same objection to the evidence of this first deposition of Mr. Allen applies to his deposition in support of the other charges which are also found in here.

I want to preserve the objection, but I do not waste the commissioner's time in going over the whole matter.

The Commissioner: Very well.

Mr. Miller: There are the depositions of other people here. The next deposition of William Salt perhaps illustrates it where he states this—it contains secondary evidence and it contains conclusions, and that is true of the other witnesses throughout, and an examination of this would determine that, an examination by the commissioner as well as by myself, and I desire to object in each case to the statement of conclusions, both of law and of fact by these witnesses, and to the secondary evidence that here and there makes up the great body of their depositions.

The Commissioner: Is it your idea, Mr. Miller, that secondary evidence is not at all admissible in a proceeding of this kind?

Mr. Miller: Why, it is only admissible when it would be admissible in a trial.

The Commissioner: Very well.

Mr. Miller: The rules of evidence are precisely the same, as I understand it.

The Commissioner: Very well.

Mr. Miller: Precisely the same; I do not know of any difference, anyway.

The Commissioner: All right.

Mr. Miller: Now, I desire to move that the demanding Government elect as between the charges which are misjoined in the Complaint of Nugent, British Consul, that they here elect and specify to the commissioner upon which of the charges they propose to ask the commissioner to recommend the extradition of the respondent, the treaty crimes which—apparently the proceeding is intended to present the crime of perjury, which is the first mentioned in the showing here, the crime of obtaining money by false pretenses and

the crime mentioned in the treaty as larceny, embezzlement and the—I may not get the language accurately——

The Commissioner: I understand.

Mr. Miller: And the obtaining of money or securities or other property knowing the same to have been embezzled, etc. Now, I submit to the commissioner that the demanding counsel or those in favor of the extradition, should be put to their election.

The Commissioner: Upon what theory?

Mr. Miller: Upon what theory?

The Commissioner: Yes.

Mr. Miller: Upon the theory that the respondent is entitled to know what he is meeting here.

The Commissioner: Is there any——

Mr. Miller: No court sitting in an extradition proceeding should send a man abroad to be tried for crimes when he don't know what he is going to be tried upon.

The Commissioner: Is there any objection to his being sent abroad to be tried on three crimes?

Mr. Miller: I should say so in the same proceeding, if the Commissioner please.

The Commissioner: Very well.

Mr. Miller: I think so.

The Commissioner: Of course, if, as you suggest, the election is required and made, and the ultimate finding is that he should respond to that, to the demanding Government's country and was acquitted of that charge, he would then be entitled to his discharge and have an opportunity of getting away?

Mr. Miller: Yes. They couldn't put him to *travel* on some other charges.

The Commissioner: And they couldn't put him to trial on some other charges?

Mr. Miller: No.

The Commissioner: Now, they would have to begin the proceedings again, on another charge, to return him for trial on that charge?

Mr. Miller: Whatever the provisions of the treaty require, if the commissioner please.

The Commissioner: I do not see, Mr. Miller, any reason why the demanding Government at this point should be put to that necessity.

Mr. Miller: Very well.

The Commissioner: I do not see why it should.

Mr. Miller: Very well. I have presented the question, if the commissioner understands it.

The Commissioner: Yes.

Mr. Miller: Very well.

The Commissioner: I think I understand it, unless there is something further that you want to say in reference to it, Mr. Miller.

Mr. Miller: I don't think so.

The Commissioner: The motion is denied.

To which ruling of the commissioner the respondent by his counsel then and there duly excepted.

Mr. Miller: Now, I desire myself, as in the nature of cross-examination—

Mr. Bulkley: Just a moment. Have you finished your objections to the evidence?

Mr. Miller: I think so.

The Commissioner: I don't think he has finished his objections to the evidence, have you, Mr. Miller?

Mr. Miller: I think so.

The Commissioner: Very well.

Mr. Miller: I think I have, yes; I will—I have stated my principal points.

The Commissioner: I will rule on that later.

203 Mr. Miller: Now I desire to—the Government here, the demanding Government have produced depositions, to a considerable extent, of the same witnesses—I mean repeated depositions, taken at the same time, purporting to be taken at the same time before the same commissioner or committing officer and under the same circumstances. They have divided them up, and sometimes they have put the deposition, the same deposition I think, in *hæc verba*, twice or three times here, in different places, and I want to read in connection with the testimony of—or in connection with the alleged deposition of Mr. Horwood, in support of the charge of obtaining money under false pretenses, a portion of his deposition that is submitted here with the warrant and complaint in Winnipeg—I will give it in the form of the complaint.

The Commissioner: What page?

Mr. Miller: Page 9 I think.

The Commissioner: Very well.

Mr. Miller: The complaint of Elliott—the information or complaint of Elliott before Sir Hugh J. McDonald, the justice of the peace or police magistrate. It is certified down here and included in the showing, and is as follows:

"Who saith that he hath reason to believe and doth believe that Thomas Kelly of the said City of Winnipeg, Contractor, between the first day of May, A. D. 1913, and the twelfth day of May, A. D. 1915, at Winnipeg aforesaid, unlawfully stole money, valuable securities or other property belonging to His Majesty the King in the Right of the Province of Manitoba, and at the said place and times, also unlawfully received money, valuable securities or other property belonging to His Majesty the King in the Right of the Province of Manitoba, which had theretofore been embezzled, stolen or fraudulently obtained by means of an unlawful conspiracy by fraudulent means, between Thomas Kelly aforesaid, Sir Rodmond P. Roblin, Walter H. Montague, James H. Howden, George R. Coldwell, R. M. Simpson, Victor W. Horwood and others to the informant unknown to defraud His Majesty the King in the Right of the Province of Manitoba, the said Thomas Kelly, then and there well knowing that said money, valuable securities or other property had theretofore been embezzled, stolen or fraudulently obtained by means of the said unlawful conspiracy."

I want to read a portion in connection with his deposition in the

false pretenses case and a portion of his deposition that follows this, I will give your honor the place—this is the testimony of Horwood who is a provincial architect——

Mr. Miller: The paragraph commencing——

Whereupon Mr. Miller here read from page 184 in the words and figures as follows, to-wit:

"After the construction of the said caissons had been commenced, Dr. R. M. Simpson of the City of Winnipeg, the president of the Conservative Association of that city, the Manitoba government being a Conservative government, came to see me and spoke of what he called campaign funds to be obtained out of the construction of the parliament buildings: I told him that I could only take instructions from the Ministers. He telephoned to the said Coldwell, who asked me to come up and see him. Coldwell said that in making changes in the original contract we should give the contractor a chance to make some money, as there had to be an arrangement made for a campaign fund. He told me that Simpson would handle the fund, and to carry out Simpson's instructions, and that Simpson would settle the amounts. I then saw Simpson and he spoke of adding \$50,000 to the caisson estimates for what he called a campaign fund for the Conservative party, which was then in power, and of which Sir Rodmond Roblin, above mentioned, was leader. After that I paid no attention to the caisson estimates, merely signing what was presented to me in the way of Progress estimates or certificates, such as Exhibits 1 to 6."

Mr. Miller: I should like to add objections to the depositions on the ground that the depositions filed in support of the first two charges, the perjury and false pretenses, are not depositions that were taken in support of—or on which the warrant in Winnipeg was issued, but were taken at a later date. The warrant in Winnipeg was issued in August, according to its date, on August 28th, and these depositions were not taken until the eleventh and twelfth of—or do not purport to have been taken until the eleventh or twelfth of October, and that they are incompetent and not admissible in support of the charge.

The Commissioner: Is it your idea, Mr. Miller, that all the depositions that are here obtained and that are competent must have been taken and presented to the committing magistrate at the time and before the issuance of the warrant?

Mr. Miller: Upon which the warrant was issued.

204 The Commissioner: Upon which the original warrant was issued?

Mr. Miller: That is the contention.

The Commissioner: Very well.

Mr. Bulkley: Well, that has been passed on, if the commissioner please.

The Commissioner: Yes.

Mr. Miller: That is the contention.

Mr. Bulkley: That has been passed on.

The Commissioner: Yes. And it is your idea that no depositions

taken in support of the warrant issued here at a subsequent date are competent?

Mr. Miller: Yes.

The Commissioner: Very well.

Mr. Miller: And particularly where they were *they were* taken—I do not use the offensively—covertly, I mean by that—

The Commissioner: You mean by that without opportunity to cross-examine?

Mr. Miller: I mean by that without opportunity to cross-examine, yes.

The Commissioner: Very well.

Mr. Miller: And upon that are the affidavits that I offered here as to absent witnesses and the affidavit of Mr. Anderson, I would like to have that considered, that he requested the opportunity of being present to cross-examine and was not given that opportunity.

The Commissioner: Very well.

Mr. Miller: Now, in order that I may be brief and put all these things concisely and pointedly, I have a motion which I have reduced to writing for the denial and dismissal of this application for extradition and for the discharge of Mr. Kelly from custody, and I will furnish counsel a copy of that and I will read it to the commissioner or otherwise act as he may direct.

The Commissioner: Let me see it, please.

Mr. Miller: Yes.

Which said motion is in the words and figures as follows, to-wit:

2041 $\frac{1}{2}$ UNITED STATES OF AMERICA,

Northern District of Illinois, Eastern Division, ss.

Before Lewis F. Mason, Esq., United States Commissioner.

In the Matter of the Application for the Extradition of THOMAS KELLY from the United States to the Dominion of Canada and Province of Manitoba under the Treaties Between the United States and Great Britain.

And now the said Thomas Kelly by Miller, Starr, Brown, Packard & Peckham and W. A. T. Sweatman, his Attorneys, moves that the said application for his extradition be dismissed and that he be discharged from custody upon the following grounds:

1. For that the said Thomas Kelly was on the first day of October, 1915, unlawfully, forcibly and against his will and protest arrested in the City of Chicago, for the purposes of such extradition proceedings by one James B. Larkin, Lieutenant of Police of the City of Chicago, without any warrant or process, and thence unlawfully held in custody by the said Police Officer of the City of Chicago until the second day of October, and until he was by said or some other police officer of the City of Chicago, acting under the instructions of said Larkin, while being so unlawfully held without any warrant or process for his detention, brought before the said United States Commissioner and there turned over to the United States Marshal

for said Northern District of Illinois; and for that said Thomas Kelly was not set at liberty from said unlawful arrest and detention by a police officer of the City of Chicago before he was turned over to and placed in the custody of the said United States Marshal, as aforesaid, and has been continuously in custody from the time of his unlawful arrest on October 1, 1915, as aforesaid, until this time.

2. The matters and things alleged in the complaint or affidavit of Horace D. Nugent herein, fail to show that the United States Commissioner, before whom these proceedings are pending, has the jurisdiction or power to issue any warrant for the arrest and examination of said Thomas Kelly with a view to the extradition of said Thomas Kelly to the Dominion of Canada or Province of Manitoba.

3. Said complaint or affidavit of the said Horace D. Nugent fails to set forth or aver facts which constitute, or which show or tend to show, the commission of the said Thomas Kelly in the Province of Manitoba in the Dominion of Canada of the crime of perjury, or the crime of obtaining money, valuable securities or other property by false pretenses, or the crime of embezzlement or larceny, or receiving any money, valuable security or other property, knowing the same to have been embezzled, stolen or fraudulently obtained, within the provisions, meaning or contemplation of the Treaties or Conventions between the United Kingdom of Great Britain and Ireland and the United States of American, or any *any* or either of them.

4. Said complaint or affidavit of the said Horace D. Nugent fails to set forth or aver facts which constitute, or which show or tend to show the commission by the said Thomas Kelly in the Province of Manitoba in the Dominion of Canada of the crime of perjury, or the crime of obtaining money, valuable securities, or other property by false pretenses, or the crime of embezzlement or larceny, or receiving any money, valuable security or other property, knowing the same to have been embezzled, stolen or fraudulently obtained, within the provisions or meaning of the statutes and laws of the State of Illinois.

5. Said complaint or affidavit of the said Horace D. Nugent fails to set forth or aver facts which constitute, or which show or tend to show the commission by the said Thomas Kelly in the Province of Manitoba in the Dominion of Canada of the crime of perjury, or the crime of obtaining money, valuable securities, or other property by false pretenses, or the crime of embezzlement or larceny, or receiving any property, knowing the same to have been embezzled, stolen or fraudulently obtained, within the meaning of the statutes and laws of the United States of America.

6. Said complaint or affidavit of the said Horace D. Nugent fails to set forth or aver facts which constitute, or which show or tend to show, the commission by the said Thomas Kelly in the Province of Manitoba in the Dominion of Canada of the crime of perjury, or the crime of obtaining money, valuable securities or other property by false pretenses, or the crime of embezzlement or larceny, or receiving any money, valuable security or other property, knowing the same to have been embezzled, stolen or fraudulently obtained, within the meaning of the statutes and laws of the Dominion of Canada.

7. The said complaint or affidavit of the said Horace D. Nugent fails to set forth or aver facts which constitute or show, or tend to show, the commission by the said Thomas Kelly in the said Province of Manitoba in the Dominion of Canada of any extraditable crime or crimes within the meaning of the said Treaties or any or either of them.

8. The pretended copies of supposed certificates, warrants, affidavits, depositions, exhibits, legislative proceedings and acts, and other papers presented here with the said complaint or affidavit of the said Nugent and offered in evidence against the said respondent, Thomas Kelly, respectively are not properly and legally authenticated so as to entitle them respectively to be received in evidence before the said Commissioner in support of such application for extradition.

9. The pretended copies of supposed certificates, warrants, affidavits, depositions, exhibits, legislative proceedings and acts, and other papers presented here with the said complaint or affidavit of the said Nugent and offered in evidence against the said respondent, Thomas Kelly, *respectfully* are not properly and legally authenticated so as to entitle them respectively to be received for similar purposes by the tribunals of the said Province of Manitoba or of the Dominion of Canada.

10. The pretended copies of supposed certificates, warrants, affidavits, depositions, exhibits, legislative proceedings or acts, and other papers presented here with the said complaint or affidavit of the said Nugent and offered in evidence against the said respondent, Thomas Kelly, respectively, or the papers or documents of which they purport to be copies, are not admissible, and would not be admitted or received in evidence for similar purposes, or for the purposes of showing criminality of the said Thomas Kelly by the tribunals of the said Province of Manitoba, or by the tribunals of the Dominion of Canada.

11. The competent evidence before the Commissioner herein does not show or tend to show the commission by the said respondent, Thomas Kelly, in the said Province of Manitoba, of the alleged crimes charged against him in the said complaint or affidavit of the said Horace D. Nugent, or any or either of them, within the meaning, terms or contemplation of the Treaty or Convention in that behalf between the United States and Great Britain.

12. The competent evidence before the Commissioner herein does not show or tend to show the commission of the said respondent, Thomas Kelly, in the said Province of Manitoba, of the alleged crime of perjury charged against him in the said complaint or affidavit of the said Horace D. Nugent, within the meaning, terms or contemplation of the Treaty or Convention in that behalf between the United States and Great Britain.

13. The competent evidence before the Commissioner herein does not show or tend to show the commission by the said respondent Thomas Kelly, in the said Province of Manitoba, of the alleged crime of obtaining money by false pretenses which is charged against him in the said complaint or affidavit of the said Horace D. Nugent,

within the meaning, terms or contemplation of the Treaty or Convention in that behalf between the United States and Great Britain.

14. The competent evidence before the Commissioner herein does not show or tend to show the commission by the said respondent, Thomas Kelly, in the said Province of Manitoba, of the alleged crime of stealing money, valuable securities, or other property, *of* the crime of unlawfully receiving money, valuable securities or other property, which had theretofore been embezzled, stolen or fraudulently obtained, which is charged against him in the said complaint or affidavit of the said Horace D. Nugent, within the meaning, terms or contemplation of the Treaty or Convention in that behalf between the United States and Great Britain.

15. The competent evidence before the Commissioner herein does not show or make probable cause for charging the said respondent Thomas Kelly with having committed in said Province of Manitoba the crime of perjury within the meaning of the said Treaty or Convention in question.

16. The competent evidence before the Commissioner herein does not show or tend to show the commission by the said respondent, Thomas Kelly, in the said Province of Manitoba, of the alleged crime of obtaining money, valuable securities or other property by false pretenses within the terms or meaning of the said Treaty or Convention in that behalf.

17. The competent evidence before the Commissioner herein does not show or tend to show the commission by the said respondent, Thomas Kelly, in the said Province of Manitoba, of the alleged crime of embezzlement; or larceny; or receiving money, valuable security or other property, knowing the same to have been embezzled, stolen or fraudulently obtained within the terms or meaning of the said Treaty or Convention in that behalf.

18. The competent evidence before the Commissioner herein does not show or tend to show the commission by the said respondent, Thomas Kelly, in the said Province of Manitoba, of the alleged crime of obtaining money, valuable securities, or other property by false pretenses within the terms or meaning of the said Treaty or Convention in that behalf.

19. The competent evidence before the Commissioner herein does not show or tend to show the commission by the said respondent, Thomas Kelly, in the said Province of Manitoba, of any extradictable crime under the said Treaties or any or either of them.

20. The said pretended crime of perjury in the Dominion of Canada and in the said Province of Manitoba with which the said respondent, Thomas Kelly, is charged, is not the crime of perjury by or under the laws of the State of Illinois or of the United States of America, and is not the crime of perjury referred to in or covered by the said Treaty Convention between the United States and Great Britain.

21. The said pretended crime of obtaining money by false pretenses under the laws of the said Dominion of Canada and Province of Manitoba with which the said respondent, Thomas Kelly, is herein charged, is not a crime by or under the laws of the State of Illinois

or of the United States of America, and is not the crime of obtaining money, valuable securities or other property by false pretenses, which is referred to in the Treaty or Convention in that behalf between the United States and Great Britain.

22. The pretended crime of larceny or embezzlement, and the obtaining of money, knowing the same to have been embezzled, stolen or fraudulently obtained, with the commission of which the said respondent, Thomas Kelly, in the said province of Manitoba, as herein charged by the complaint or affidavit of the said Horace D. Nugent, is not a crime by or under the laws of the State of Illinois or of the United States.

23. The pretended crime of stealing money, valuable securities or other property, which is charged against the said respondent, Thomas Kelly, in the said Province of Manitoba, by the alleged complaint or information of Edward J. Elliott before Sir Hugh J. Macdonald, Police Magistrate in the said Province, or the pretended crime of larceny or embezzlement or other pretended crime for which the said respondent stands here charged by the complaint of said Horace D. Nugent, is not a crime by or under the laws of the State of Illinois or of the United States.

24. There is a misjoinder of charges in the said complaint or affidavit of the said Horace D. Nugent.

207 25. The said pretended offenses charged against the said respondent, Thomas Kelly, herein, are not made criminal by the laws of both countries within the provisions, meaning and contemplation of the said Treaties between the United States and Great Britain. As to each of said pretended charges or offenses charged herein the respondent says that it is not made criminal by the laws of both countries within the meaning of said Treaties.

26. As to each of said charges of crime against the said respondent, Thomas Kelly herein, and as to each of the said alleged offenses, severally, the said respondent says that there is not such evidence of criminality as according to the laws of the place where the said respondent, Thomas Kelly, was found, would justify his apprehension and commitment for trial of such pretended crime or offense had such pretended crime or offense been there committed.

27. As to each of said pretended offenses severally which are herein charged against the said Thomas Kelly, the said respondent, says that such pretended offense is not within the terms of the Treaty or Convention in that behalf between the United States and Great Britain.

28. For that the said Thomas Kelly is unlawfully detained and held in custody by the United States Marshal.

THOMAS KELLY,
By MILLER, STARR, BROWN,
PACKARD & PECKHAM,

His Attorneys.

JOHN S. MILLER,
EDWARD O. BROWN,
W. A. F. SWEATMAN, AND
CHARLES L. COBB,

Of Counsel.

The Commissioner: From number one to seven are objections to the form and substance of the complaint and warrant?

Mr. Miller: Yes.

The Commissioner: Very well.

Mr. Miller: I think those numbers are right, if the commissioner please, whatever they are.

The Commissioner: Yes.

Mr. Miller: That is the complaint of the British Consul.

The Commissioner: Yes.

Mr. Miller: Here.

The Commissioner: In this proceeding?

Mr. Miller: Yes.

The Commissioner: Number eight is as to the sufficiency of the authentication by the consul at Winnipeg, of the United States?

Mr. Miller: Yes.

The Commissioner: From nine to fifteen is practically a demurrer to the evidence?

Mr. Miller: Yes.

The Commissioner: A demurrer to the sufficiency of the testimony?

Mr. Miller: Yes.

The Commissioner: Very well.

Mr. Bulkley: All the way through.

Mr. Miller: Yes.

The Commissioner: I have only got as far as fifteen, Mr. Bulkley.

Mr. Bulkley: Yes.

The Commissioner: It goes clear to the end, does it, Mr. Miller?

Mr. Miller: That is included in there, and the contention is that the evidence is not such as to make it probable cause, and there is also evidence there as to the requirements of the crimes in each of the countries, and that is negatived here, that they are not—that they are respective crimes and that they are not within the treaty, and that may be done generally in one place and specifically in another place—it is intended to be covered.

The Commissioner: Is it your intention to go any further and to offer any further evidence in support of these objections?

Mr. Miller: I think not.

The Commissioner: Very well.

Mr. Miller: I think not, if the commissioner please. That was not our purpose, unless it be to refer to the provisions applicable to the Canadian Criminal Code, the book of which is here.

The Commissioner: Yes, that is before me.

Mr. Miller: And as I understand it, we have that privilege, as if the whole book was in evidence?

The Commissioner: Oh, yes.

Mr. Miller: Without encumbering the record?

The Commissioner: Oh, yes.

Mr. Miller: Very well.

208 The Commissioner: Then, do I understand that you, on behalf of the respondent, rest your case with the making of this motion?

Mr. Miller: Yes.

The Commissioner: Very well.

Mr. Miller. I think I would like to add objections to the depositions, in their proper place, the objection to the depositions in support of the last charge appearing in the depositions, the charge covered by the last—in the order in which they are presented in the printed showing here, the last charge, that of larceny and embezzlement, referring to a treaty, where the definition of larceny, embezzlement and the receiving, etc.—on the ground that the opportunity was not given, on the taking of those depositions, to the respondent to appear and cross-examine—that the opportunity was not given the respondent to have his counsel appear and cross-examine, and that the affidavit of Mr. Anderson that is here presented will be applicable to that.

The Commissioner: Well, gentlemen, I have at present not read, with any degree of care or—and I might say that I have read hardly half of the matter that is in print now before me. I supposed that on this occasion we would go through it and that you would point out the questions which you intended to controvert by testimony, and thus save me the trouble of going through this twice.

Mr. Miller: The only testimony that I have presented here is the testimony with reference to the arrest.

The Commissioner: Yes.

Mr. Miller: The affidavits that were presented here and which I am using also upon the objections to the testimony and a portion of the deposition of Mr. Horwood, assuming that it is received in evidence at all—which I desire to have applied to the false pretense charge, and other than that I have not any—there will be no occasion for me to point out portions of the testimony, because I have not any witnesses.

The Commissioner: Then you are in the position of practically relying entirely upon the evidence of the Government—the evidence of the demanding Government, as your defense?

Mr. Miller: Yes, with the other points that were raised.

The Commissioner: Yes, with the technical objections?

Mr. Miller: Yes, I suppose it might be so called, if the commissioner please.

The Commissioner: In reply to this motion, Mr. Bulkley, do you want to submit any counter motion, or will you let me take it for consideration as it now stands?

Mr. Bulkley: Why, I simply want to suggest that there is no reason in the record why the motion should be allowed; it should be denied, and I do not see any reason to make any counter motion, because when the commissioner passes upon this motion——

The Commissioner: It disposes of the entire matter.

Mr. Bulkley: Yes, when the commissioner passes upon this motion it disposes upon the entire matter.

The Commissioner: Yes.

Mr. Bulkley: I may say with reference to the motion that counsel has made regarding the striking out of certain depositions, or objections to them, that the Supreme Court of this country—the

Supreme Court of the United States has practically held, and I should think, specifically held that where the consular certificate is sufficient, the evidence is admissible, and it is just a question of the weight of it to be given to it by the commissioner—the weight that is to be given to it by the commissioner.

The Commissioner: Yes.

Mr. Bulkley: Now, I remember in the case of—I think it is in the Oteiza case, and perhaps in the DeNota case of Mexico, where it was claimed that certain of the testimony had never been sworn to, and the Supreme Court said that it did not make any difference.

Mr. Miller: The point had not been raised, had it?

Mr. Bulkley: What?

Mr. Miller: The court noted that and also noted that the point had not been raised, isn't that right?

Mr. Bulkley: No, it did not.

Mr. Miller: What is that?

Mr. Bulkley: No, it did not.

The Commissioner: That the certificate, even if erroneous as to the questions of law made whatever it said behind it the truth?

Mr. Bulkley: No. The certificate made all the documentary evidence and the depositions which it covered competent evidence to be admitted at the hearing, and it was then for the commissioner to determine the weight of the evidence.

The Commissioner: Yes.

Mr. Bulkley: It was for the commissioner then to determine what weight he would give it.

The Commissioner: Yes.

209 Mr. Bulkley: That is what they held, if the commissioner please, and that is the rule.

The Commissioner: Very well.

Mr. Bulkley: And I might add further with reference to the deposition of John Allen, that I understand that the foreign law in the courts of this country is a question of fact and not a question of law, and a question of fact may be proven either by offering the law in evidence or by counsel of the country, learned in the law——

The Commissioner: But if they are both in the record?

Mr. Bulkley: How is that?

The Commissioner: But if they are both in the record?

Mr. Bulkley: And if they are both in the record, it is merely proving it in two ways.

The Commissioner: Very well.

Mr. Bulkley: Which we would have a perfect right to do, if your honor please.

The Commissioner: Yes.

Mr. Bulkley: To prove the fact in as many different ways as we see fit, or in as many different ways as we can prove it.

The Commissioner: Very well.

Mr. Bulkley: It is for the commissioner to determine if there is any discrepancy between the testimony of the witnesses and the law itself.

The Commissioner: Yes.

Mr. Bulkley: It is for the commissioner to determine which he will follow, but I do not think there is any discrepancy, if the commissioner please.

The Commissioner: Very well.

Mr. Bulkley: Further, we have a right to put in the testimony of counsel learned in the law with reference to the foreign law, as an expert on the foreign law, and that is all that the deposition of Mr. Allen covers.

Mr. Miller: What about his testimony that in his opinion a crime has been committed?

Mr. Bulkley: Mr. Allen has simply interpreted the statute as an expert witness, as far as his deposition goes. Now, I don't know that I have—

The Commissioner: I think that with these papers before me—have you any points to make, Mr. Miller, or anything further to suggest on your ground number one, that Thomas Kelly was forcibly and unlawfully, against his will, arrested without a warrant?

Mr. Miller: If his arrest was unlawful he ought to have been freed from it.

The Commissioner: I see.

Mr. Miller: In other words, you cannot make an unlawful arrest a lawful one.

The Commissioner: There is this situation, that he was discharged upon the first complaint.

Mr. Miller: He was never set at liberty at any sense of the law at all. That is my point here, if the commissioner please.

The Commissioner: I see.

Mr. Miller: That is the point I make.

The Commissioner: Very well.

Mr. Bulkley: Well, the Supreme Court has had that situation before it.

The Commissioner: Yes, in the Schroeder case.

Mr. Bulkley: Yes.

The Commissioner: That was in the Schroeder case, and I remember that very well.

Mr. Bulkley: Yes, where they followed exactly the practice that we have practiced here.

The Commissioner: Yes.

Mr. Bulkley: By dismissing on one complaint and re-arresting on another complaint.

The Commissioner: Well, I will take that all into consideration, of course.

Mr. Bulkley: Yes.

The Commissioner: I do not suppose that I can dispose of it before a week or ten days, because I am frank to say that I have not gone through this testimony as I should have gone through it if I had known that this would have been the result today.

Mr. Miller: I understand.

The Commissioner: I presumed that there would be other evidence in connection with the matter and I was going to consider it altogether.

Mr. Miller: Very well.

The Commissioner: Suppose we continue it to November 11th at 2 o'clock?

Mr. Miller: November 11th?

The Commissioner: Yes.

Mr. Miller: Let me see, today is the second, isn't it?

The Commissioner: Yes.

210 Mr. Miller: Today being the second, that will be nine days.

The Commissioner: Yes.

Mr. Miller: Very well.

The Commissioner: What do you say, gentlemen?

Mr. Miller: Whatever the court says.

The Commissioner: And I believe I can dispose of it by that time, gentlemen.

Mr. Miller: Very well.

Mr. Bulkley: That reviews the evidence, if the commissioner please, it is just a brief of the evidence, followed by the law, and it has got attached to it, the Canadian statutes and the Federal statutes, and the Illinois statutes that correspond.

The Commissioner: Very well. The matter is adjourned to November 11th at 2 o'clock.

Mr. Miller: Very well.

Which were all the proceedings had at the time and place above stated.

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Opinion.

On October 15th complaint and affidavit was filed before me by Horace D. Nugent, His Britannic Majesty's Consul General in Chicago under oath charging Thomas Kelly, late of Winnipeg, Province of Manitoba in the Dominion of Canada, in the Domain of His Britannic Majesty, with three crimes.

1. Perjury.

2. Obtaining money by false pretenses.

3. Larceny or embezzlement, and the obtaining of money knowing the same to have been embezzled, stolen, or fraudulently obtained.

The complaint sets forth specifically the crimes charged. Thereupon a warrant drawn in appropriate language was issued, delivered to the United States Marshal for the Northern District of Illinois, and the respondent immediately apprehended.

Previous to this, on October 1, 1915, a complaint sworn to by Lewis E. Bernays, Vice Consul General at Chicago for His Britannic Majesty, upon which a warrant was immediately issued and the respondent taken into custody. The hearing had been continued from time to time until October 15th, when on motion of counsel for the British Government the original complaint was dismissed and the above mentioned complaint sworn to and filed, and the respondent taken into custody thereon. On October 15th the respondent was represented by Mr. W. S. Forrest, Mr. W. A. T. Sweatman, Mr.

Pierce Butler, Mr. Robert E. Crowe and Mr. Charles V. Barrett. At the close of the proceedings of October 15th the hearing was adjourned to October 21st at 11 A. M. The appearance of Mr. W. S. Forrest having theretofore been withdrawn on October 16th, the appearance of Mr. John S. Miller of the firm of Miller, Starr, Brown, Packard & Peckham was entered. On October 15th the testimony of John C. McRae, Commissioner of Police, from Manitoba was taken to establish the identity of the respondent, and the exhibits attached to the complaint were offered in evidence.

On October 21st on motion of Mr. Miller for the respondent the hearing was continued until November 2d, for the purpose of giving Mr. Miller for respondent an opportunity to examine the testimony theretofore taken and to prepare his defense and bring such
211 witnesses from Canada as he desired. With the introduction of the provisions of the Criminal Code the depositions, exhibits and testimony as to identity, the demanding Government rested its case, and the hearing was continued.

On November 2d, witnesses Larkin and O'Brien were called on behalf of respondent and were permitted to testify over the objection of counsel for the British Government as to the manner and proceeding of arrest of the respondent on September 30th, and the circumstances in connection with his surrender to the United States Marshal upon a warrant of extradition on October 1, 1915.

At the outset I was of the opinion that the testimony of the witnesses had no bearing upon the issues and had no place in the record but for the purpose of giving the respondent such opportunity to preserve his exception, the testimony was taken, and upon motion of attorneys for the British Government it is ordered that the same be stricken from the record, together with the exhibits.

In the motion to dismiss the application for extradition, first, the point is relied upon by counsel for the respondent on the theory that the respondent was unlawfully held from the evening of September 30th to the morning of October 1st without warrant of law by police officers of the City of Chicago, and that for that reason respondent was immediately entitled to a discharge from custody before me.

Beyond the mere recital of the objections and exception of counsel for respondent in their motion to dismiss, I have not been aided with any brief or authorities in support of their contention. But I find the Supreme Court of the United States in the case of Pettibone vs. Nichols, in the 230 Volume, beginning at page 192, take up an analogous situation and sustain my point of view. Mr. Justice Harlan in a statement of the case at page 195 says:

"That a wrong is committed against him in the manner or method pursued in subjecting his person to the jurisdiction of the complaining State, and that such wrong is redressible either in the civil or criminal courts, can constitute no legal or just reason why he himself should not answer the charge against him when brought before the proper tribunal." *Ex parte Moyer*, 85 Pac., 897; *Ex parte Pettibone*, 85 Pac., 902.

This statement is affirmed in the opinion of the Court at page 213.

In discussing the case of *Adams vs. New York* in the 192d U. S., page 585:

"If a person is brought within the jurisdiction of one state from another, or from a foreign country, by the unlawful use of force, which would render the officer liable to a civil action or in a criminal proceeding because of the forcible abduction, such fact would not prevent the trial of the person thus abducted in the state wherein he had committed an offense."

Again at page 214, referring to the case of *Ker vs. Illinois*, 119 U. S., 437:

"It is settled that a party is not excused from answering to the State whose laws he has violated because violence has been done him in bringing him within the State." Quoting at page 215: "It has been distinctly recognized in the courts of England and in many states of the Union." Ex parte Scott, 9 B. & C., 446, one accused of crime against the laws of England, and who was in custody for trial, sought to be discharged upon habeas corpus because she had been improperly apprehended in a foreign country. Lord Tenterden, Ch. J., said: "The question, therefore, is this: Whether, if a person charged with a crime is found in this country, it is the duty of the court to take care that such a party shall be amenable to justice, or whether we are to consider the circumstances under which she was brought here. I thought and still continue to think, that we cannot inquire into them. If the act complained of were done against the law of the foreign country, that country might have vindicated its own law. If it gave her a right of action she may sue upon it." Citing cases.

Also beginning at page 216: "Even were it conceded, for the purposes of this case, that the Governor of Idaho wrongfully issued his requisition, and that the Governor of Colorado erred in honoring it and in issuing his warrant of arrest, the vital fact remains that Petibone is held by Idaho in actual custody for trial under an indictment charging him with crime against its laws, and he seeks the aid of the Circuit Court to relieve him from custody, so that he may leave that state and thereby defeat the prosecution against him without a trial. In the present case it is not necessary to go behind the indictment and inquire as to how it happened that he came within reach of the process of the Idaho Court in which the indictment is pending. And any investigation as to the motives which induced the action taken by the Governors of Idaho and Colorado would, as already suggested, be improper as well as irrelevant to the real question to be now determined."

212 Again referring to the case of *Ker vs. Illinois*, in the 119th P. S. at page 444, Mr. Justice Miller says:

"There are authorities of the highest respectability which hold that such forcible abduction is no sufficient reason why the party should not answer when brought within the jurisdiction of the court which has the right to try him for such an offense, and presents no valid objection to his trial in such court." Quoting numerous cases.

In the case at bar the respondent was forcibly held against his will over night, upon telegraphic request from Canadian officials.

And as is further quoted from the Ker case at page 444: "The party himself would probably not be without redress, for he could sue Julian in an action of trespass and false imprisonment, and the facts set out in the plea would without doubt sustain the action." But as previously said in the opinion that question was not being disposed of in the proceedings in the State Court.

And it is further quoted in the Adams vs. New York case by Mr. Justice Day at page 596:

"In this Court it has been held that if a person is brought within the jurisdiction of one state from another or from a foreign country, by the unlawful use of force, which would render the officer liable to a civil action or in a criminal proceeding because of the forcible abduction, such fact would not prevent the trial of the person thus abducted in the state wherein he had committed an offense.

From the reading of such opinions as I have been able to find I am clearly of the opinion that even though the forcible detention of the respondent may have been unlawful on the part of the police officers of the City of Chicago it afforded the defendant no defense to the crimes charged against him by the demanding Government. And after once having been lawfully apprehended by the United States Marshal upon an extradition warrant, and after the submission of the defendant on October 15th, by counsel, to such warrant, all the proceedings and circumstances that occurred before relative to the arrest were not competent as evidence on behalf of the respondent of his defense to the charges, but were only matters which could be litigated in separate proceedings against the officers by the State of Illinois or by the respondent against them for damages.

During the proceedings motion is made by the attorney for respondent for an order requiring the demanding Government to elect upon which of the three charges they are presenting the testimony for extradition and upon which charge they intend if extradition is granted, *they intend* to prosecute respondent. My attention has not been called to any authority on behalf of the respondent for such an order, and if the demanding Government have sufficiently proven the three crimes charged in the complaint the certificate to the executive officer will embody such findings.

As a further matter of defense counsel for the respondent offers the affidavits of certain parties in support of the proposition for leave to take depositions. The parties would not come to Chicago to testify, and that it was impossible to properly present their defense without leave being granted to take such depositions.

I am of the opinion that it was beyond the jurisdiction or discretion of the Commissioner to permit the taking of depositions on behalf of the respondent, and that the only way that such defense could have been introduced would have been by the testimony being taken in open proceedings.

Leave was given the defendant to file his motion and affidavits for the purpose of preserving his exception, but upon motion for

the attorneys for the British Government they are stricken and are not considered.

Objections are made to the sufficiency of the certificates of the American Consul to the depositions, affidavits and exhibits submitted to me. I find that they comply with the wording of the statute, and upon the authority of *Grin vs. Shine*, 187 U. S., 193, the objections are overruled.

The rest of the points covered by the motion to dismiss go to the sufficiency of the complaint and the evidence submitted to me to award the application for extradition; and this brings us to the consideration of the testimony with a view of sustaining probable cause. The Supreme Court of the United States has clearly laid down the rule that the proceedings before a Commissioner is not a trial and the issue is confined to the single question whether the evidence makes a *prima facie* case of guilt sufficient to make it proper to hold the party for trial. In other words, is there probable cause to believe that a crime has been committed and that the respondent is guilty of the crime. In more clearly defining this statement and aiding me to arrive at a final judgment, I am guided by Mr. Chief Justice Marshall's opinion in the Aaron Burr case wherein he says: "On an application of this kind I certainly should

213 not require that proof which would be necessary to convict the person to be committed on a trial in chief, nor should

I even require that which should absolutely convince my own mind of the guilt of the accused, but I ought to require and I should require that probable cause be shown; and I understand probable cause to be a cause made out by proof furnishing good reason to believe that the crime alleged has been committed by the persons charged with having committed it."

With this statement of the rule to be followed before me I will review the evidence as presented by the demanding Government, and I am inclined by reason of the fact that there is no denial on behalf of the respondent, or any evidence offered on his behalf, to take such competent testimony found in the case made out on behalf of the demanding Government, as true.

Briefly, I find from the record that Thomas Kelly engaged with his sons as partners in the firm of Thomas Kelly & Sons, contractors, by reason of certain contracts held with the Government of the Province of Manitoba erected certain portions of the new parliament buildings in the City of Winnipeg; that on May 26, 1913, advertisements were displayed for bids for the erection of the buildings and the bids were to be delivered by 12 o'clock noon on the second day of July, accompanied by checks guaranteeing the faithful performance of the contracts if they should receive the same. By some process the bids were not opened until July 3d, when it was discovered that the bid of Thomas Kelly & Sons was approximately \$4,000.00 under the bid of Peter Lyall & Son, who had bid \$2,863,000.00. By the original specifications piling foundations were to be used under the buildings, but Harwood testifies that reinforced concrete caissons were to be substituted. And it was generally conceded in advance of the submission of bids that concrete

foundations would be substituted for the piling. In the bid of Kelly specifications calling for piling foundations he bid \$64,000. It is conclusively shown by the exhibits that he received in addition to his check of \$64,000.00 an additional sum of \$779,987.00, which included pay for the concrete reinforced foundations at the rate of \$12.00 per cubic yard, \$7.00 per cubic yard for excavation; \$40.00 a thousand for lumber and seven cents per pound for iron rings and bolts. He charged for and obtained pay for 1,213,000 feet of lumber and sufficient iron for 468 caissons; there were, however, only 369 actually put in. And the iron rings and bolts were used over and over as there were never more than 30 to 60 caissons under construction at one time. The testimony of witnesses shows that the lumber used in lining the caissons was used over and over again and that there was not to exceed 100,000 feet used in the construction of these caissons, and that that lumber was not worth to exceed \$20.00 a thousand instead of \$40.00; testimony of various experts as to the quality of the concrete shows that the same was not up to the required specifications, and that there was no crushed stone in any of the caissons as required by the specifications; that the mixture consisted of approximately one part of concrete, and from eight to nine of sand and gravel. The testimony of experts that there is no steel reinforcement in any of the caissons except two, and that the charge of \$4.00 a cubic yard for steel-reinforcement was without any justification.

Witness J. H. Russell says: "I find the value of the caissons to be at the outside valuation \$228,198.90, allowing a reasonable profit for the contractor." The exhibits show that the sum of \$800,000.00 was paid to Kelly upon the representation that there was over 35,000 yards of reinforced concrete. From the invoices of Thomas Kelly and Sons it appears that only 28,000 barrels of cement was received and used in this work, and under the testimony it required a barrel and a half for each cubic yard, there were not to exceed 16,000 cubic yards of cement in the caissons. On the basis of one barrel of cement to each cubic yard there could not have been more than 23,000 cubic yards of excavation and concrete, yet Kelly's company had charged and received pay for 35,900 yards.

Referring to the charge of perjury upon which extradition is demanded, the respondent on the 26th day of March, 1915, before the Public Accounts Committee, after being duly sworn on oath administered by the chairman of the committee, in reply to the question:

"Q. In what proportions were the ingredients in the concrete in the caissons?

A. One, two and four, or one and six; one of cement, two of sand and four of broken stone.

Q. How much cement does it take with those propositions to make a yard of concrete?

A. A little over a barrel and a half.

Q. How much sand?

A. We make it a habit of figuring on half a yard of sand and a yard of broken stone."

214 I hold that by this one statement under oath before this Committee that he knew that he was stating that which was not true, he at the time knowing that the same was not true, and in accordance with Section 170 of the Criminal Code of Canada defining perjury as follows:

"Perjury is an assertion as to a matter of fact, information, belief or knowledge made by a witness in a judicial proceeding as part of his evidence upon oath or affirmation * * * and whether such evidence is material or not, such assertion being known to such witness to be false and being intended by him to mislead the court, jury or person holding the proceedings."

Judicial proceeding is described by the statutes of Canada, part 2 of Section 171, as follows:

"Every proceeding is judicial within the meaning of the last preceding section which is held under the authority of * * * either the Senate or House of Commons of Canada or any Committee of either the Senate or House of Commons, or before any legislative council, legislative assembly—or any committee thereof empowered by law to administer an oath."

The oath administered to Mr. Kelly was administered under Section 35 of an Act relating to legislature of Manitoba, Chapter 112, which appears in the evidence.

The next contract is for the steel in the north wing of the building and was dated March 26, 1914, for the extra expense of changing the superstructure from reinforced concrete to steel construction. It appears from the evidence that Thomas Kelly and Sons received \$195,000.00 on account of this contract, and it appears that this work has not been performed. The contract of July 20, 1914, for \$215,000.00 is for the south wing. The evidence shows that this contract was padded. Contract for \$280,000.00 for steel work in the south wing and central dome was entered into by guess, but no work was ever done upon it or money paid. Testimony shows that the extra cost is the result of the change of the foundations, extra cost for steel in the north wing and extra cost of grillage steel for the south wing, and the \$820,000.00 proposed is extra charge for concrete construction in the south wing amounting to over \$2,000,000.00 extra work upon the buildings, of which \$1,158,000.00 was paid.

This is a very brief outline of the testimony before me. I have not undertaken to review testimony connecting the defendant with the leaving of Canada by the witness Salt or any attempt to bribe him to come back and perjure himself, or review the various statements of witnesses, conversations with the respondent in the discussions between the respondent and various members of the cabinet showing the gigantic scheme to defraud the Government and their attempts to hide the evidence from the investigations. All of these circumstances point to the guilt of the respondent and the fear of the prosecution of himself and other members of the cabinet.

From a careful reading of the testimony I am forced to the conclusion that there was a well defined scheme on the part of the respondent and various officials named in the testimony, and certain

of them testified to obtaining money from the Government upon these contracts for construction of the parliament buildings unlawfully and by means of false pretenses. There seems to have been an utter disregard of common honesty in the padding of the contract prices, of the approval for payment of the original contract and extras.

With reference to the second charge in the complaint, obtaining money by false pretenses, I find that the evidence sustains that charge to a greater degree than is required by the rule stated by Mr. Justice Marshall, and that charge will be one of those mentioned in the ultimate certificate to the Secretary of State.

The third charge appearing in the complaint, larceny or embezzlement and the obtaining of money knowing the same to have been embezzled, stolen or fraudulently obtained, is based upon the conspiracy between Kelly, Roblin, Montague, Howden, Coldwell, Simpson and Horwood, in which they conspired to receive money or property belonging to the King which had been fraudulently obtained.

Without reviewing the evidence in detail it appears to me clearly that such a conspiracy was in existence and several of them confirm its existence by their testimony indirectly. The parts that various of the conspirators play in connection with the bids and giving of the contracts for extras, the approval for payments, the attempt to predate a written contract, the leaving of the country of one or two of the conspirators, the payment of money to such to stay away, the apparent confidential relations between this respondent and the officials of the Government, and other such coincidences appearing in the testimony force me to the conclusion that this conspiracy existed.

Section 444 of the Criminal Code of Canada, page 240 of the record, provides "Everyone is guilty of an indictable offense * * * who conspires with any other persons by deceit or falsehood or any other fraudulent means, to defraud the public or any person." * * * Whether such deceit or falsehood or other fraudulent means would or would not amount to a false pretense as hereinabove defined the evidence clearly proves a conspiracy to defraud the public by deceit and falsehood in representing a false amount of work done and a false amount of materials used, "And other fraudulent means" by means of fraudulent securing of the contract to Kelly through the connivance of the officials who should have been protecting the interests of the public rather than aid in the looting of the treasury.

In Mr. Justice Brown's United States Supreme Court opinion in the case of *Grin vs. Shine* at page 184 of Volume 187 he says:

"We shall only notice such alleged defects in the extradition proceedings as are pressed upon our attention in the briefs of counsel. While these defects are of a technical character, they are certainly entitled to respectful and deliberate consideration."

Further:

In the construction and carrying out of such treaties the ordinary technicalities of criminal proceedings are applicable only to a

limited extent. Foreign powers are not expected to be versed in the niceties of our criminal laws, and proceedings for a surrender are not such as put in issue the life or liberty of the accused. They simply demand of him that he shall do what all good citizens are required, and ought to be willing to do, viz., submit themselves to the laws of their country."

The motion to dismiss heretofore referred to indicated the reliance of the respondent upon a purely technical defense. They are, nevertheless, entitled to "respectful and deliberate consideration." And in the view of the further expression of Mr. Justice Brown that ordinary technicalities of criminal proceedings are applicable only to a limited extent, I have viewed the objections with that in mind.

Paragraph 1 I have already disposed of.

Paragraph 2 avers that the complaint failed to show that the Commissioner had jurisdiction or power to issue a warrant in extradition.

Again referring to *Grin vs. Shine*, at page 186: "There is no evidence that Mr. Morse, who took this complaint, was not a United States Commissioner appointed under the Act of May 28, 1896 (29 Stat., 140-184) and the fact that he signs his name as such, and that he was recognized as such by the Circuit Court in this proceeding, is sufficient evidence of his authority."

On October 15th the affidavit of Horace B. Nugent was taken and the Commissioner signed his name "United States Commissioner for the Northern District of Illinois, a Commissioner duly authorized by the District Court of the United States for the Northern District of Illinois to act as Commissioner under the laws of the United States concerning the extradition of fugitives from justice of a foreign Government under the treaty or convention between this and any foreign government." The records of the District Court are open and should this not have been true, and should the statement as to the authorization not have been true advantage should have been taken of it immediately.

Third. Said complaint and affidavit of Horace D. Nugent fails to set forth the facts which constitute * * * the commission by said Kelly in Manitoba, *by him* of the crimes of perjury, obtaining money, etc., within the provisions of the treaties between the United Kingdom of Great Britain and the United States.

As counsel has not seen fit to point out specifically defects in the complaint, I have patiently endeavored to find such defects so broadly asserted, and I fail to do so. The language of the complaint follows nearly the language of the statute of Canada.

Fourth. Same objection. The complaint does not set out the crimes within the provisions or meanings of the statute of the State of Illinois.

Careful comparison of the two statutes and the complaint, together with the treaty, show the intent of both Canada and Illinois to punish the crimes of perjury, obtaining money by false pretenses and larceny or embezzlement and obtaining money knowing the same to have been embezzled, stolen or fraudulently obtained. It can not be conceived that the statutes of the various

countries follow the exact wording or that the treaties in mentioning the crimes follow the wordings of both countries, but as the Supreme Court has said in numerous cases that legal definitions of the same crime may vary, yet the intent and purpose of the treaty was to accomplish extradition and the trial on the merits which should follow.

Fifth. Exception is taken that the complaint does not charge the crimes to the respondent in the language or meaning of the statutes of the United States of America.

216 Article 10 of the Ashburn Treaty of 1842 provides that the extradition shall "Only be done upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found."

This specifies the laws of Illinois shall govern; for which crimes the respondent shall be extradited, the laws of the United States and treaties govern.

Sixth. Exception is taken that the complaint fails to aver facts which constitute or which tend to show the commission by said Kelly of the crime of perjury, obtaining money, etc., for the crime of embezzlement, etc., within the meaning of the statutes of the Dominion of Canada.

Seventh. The point set forth in paragraph seven is merely a repetition of the points set forth in paragraphs three, four, five and six, and has been disposed of.

Eighth. Paragraph eighth complains of the certificate attached to the depositions did not entitle them to be received in evidence in support of the application for extradition.

The certificates follow the wording of the statute.

Mr. Justice Brown at Page 193, 187 U. S., says:

"If we were to hold that a certificate in the language of the statute was insufficient, the certifying officer would be at once embarked upon a sea of speculation as to the proper form of such certificate, and would be utterly without a guide in endeavoring to ascertain what the requirements of the law were in that particular."

Except with the addition of the words "as evidence" the Supreme Court in the same paragraph say: "The introduction of the words 'as evidence' does not vitiate the certificate. We find it difficult to conceive any other purpose for which such depositions could be used except as evidence of criminality."

Paragraphs 9 and 10 carry the same objections, and involve the sufficiency of the Consular General of the United States certificate, and the same reasoning applies.

Paragraph 11, general objection is to the sufficiency of the evidence to show commission of the crime charged in the complaint.

Paragraph 12 is the same objection as to the charge of perjury within the meaning of the Treaty between the two countries.

Paragraph 13 has the same objection as to the crime of obtaining money by false pretenses, as contemplated by the Treaty between the two countries.

Paragraph 14 has the same objection as to the crime of stealing money, valuable securities or other property, or unlawfully re-

ceiving the same, as contemplated by the Treaty between the two countries.

Paragraph 15 raises the objection that the competent evidence does not show probable cause respondent having committed the crime of perjury within the meaning of the Treaty.

Paragraph 16, the same objection as to the crime of obtaining money within the meaning of the Treaty and Convention.

Paragraph 17, the same objection as to the time of embezzlement or larceny, or receiving money knowing the same to have been embezzled under the treaty and convention.

Paragraph 18, same objection as to the crime of obtaining money and valuable securities by false pretenses under the meaning of the convention.

Paragraph 19, that the evidence does not tend to show the commission by the respondent of any extraditable crime under the treaties.

These objections are all overruled for the reason that if the dispositions are to be received for anything they make a clear case of criminality as conceived by the treaties and our statutes sufficient to order the extradition of the respondent.

Paragraph 20, objection that the crime of perjury is not covered by the treaty and not a crime under the laws of the State of Illinois or the United States.

The same objection is made in paragraphs 21, 22 and 23 except as to the different crimes alleged in the complaint.

Paragraph 24 complains that there was a misjoinder of charges in the complaint. I can conceive that in the trial under the laws of the State of Illinois that an indictment charging all three crimes might be a misjoinder, but in an extradition matter there are no objections pointed out by the statute to the extradition of a defendant upon as many charges as he may be believed to be guilty of by the demanding country.

Paragraph 25, objection that the charges in the complaint are not made criminal by the laws of both countries or the treaties.

Paragraphs 26 and 27 are merely repetition of the objections heretofore enumerated.

In conclusion I am forced to the decision that the crimes of perjury, obtaining money by false pretenses and larceny or embezzlement, and the obtaining of money knowing the same to have been embezzled or fraudulently obtained are crimes contemplated by the laws of Canada, by the laws of the State of Illinois and by
217 the treaties between the countries, and that such crimes have been committed in the Province of Manitoba, in the City of Winnipeg, Canada.

Further, that the competent evidence certified to by proper American officials at Winnipeg shows that there is probable cause to believe the respondent guilty of such offenses, and the appropriate certificate of such findings will be prepared and forwarded under the provisions of the statute to the executive officers of the United States setting forth those facts. Pending the disposition by such official mittimus or commitment will issue remanding the respondent to await further due process of law.

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Mittimus.

Before Lewis F. Mason, United States Commissioner for the Northern District of Illinois.

In the Matter of the Application for the Extradition of THOMAS KELLY, a Fugitive from Justice under the Treaties between the United States and Great Britain.

UNITED STATES OF AMERICA,

Northern District of Illinois, Eastern Division, ss:

The President of the United States of America to the Marshal of the Northern District of Illinois, and to his Deputies, or to any or either of them, and to the Keeper of the County Jail of the County of Lake at Waukegan, in the State of Illinois, Greeting:

Whereas, the above named Thomas Kelly has been arrested on the oath of Horace D. Nugent, His Britannic Majesty's Consul General, at Chicago, Illinois, United States of America, for having on or about the 26th day of March, A. D. 1915, and at other times between the 1st day of May, 1913, and the 1st day of May, 1915, at Winnipeg in the Province of Manitoba, in the Dominion of Canada, in the domain of His Britannic Majesty, and within his jurisdiction, committed the crimes of

1. Perjury.

2. Obtaining money by false pretences.

3. Larceny or embezzlement, and the obtaining of money, knowing the same to have been embezzled, stolen or fraudulently obtained.

That the said Thomas Kelly at Winnipeg, in the Province of Manitoba, in the Dominion of Canada, in the domain of His Britannic Majesty, did on or about the 26th day of March, A. D. 1915, unlawfully commit the crime of perjury by swearing in a judicial proceeding, to-wit, before the Public Accounts Committee of

218 the Legislative Assembly of the Province of Manitoba, in words to the effect that the proportions in which the ingredients were in the concrete in the caissons of the new parliament buildings at Winnipeg in Manitoba, constructed by Thomas Kelly and Sons, were one, two and four, or one and six, one of cement, two of sand and four of broken stone, and that the amount of cement was a little over a barrel and one-half in each cubic yard of concrete in said caissons, such assertion being then and there known to the said Thomas Kelly to be false and being intended by him to mislead the Committee, contrary to the statute in such case provided.

That said Thomas Kelly was also there guilty of the crime of obtaining money by false pretences; that between the 16th day of July, 1913, and the 1st day of January, A. D. 1915, at Winnipeg aforesaid, in the Province of Manitoba, in the Dominion of Canada, in the domain of His Britannic Majesty, the said Thomas Kelly did unlawfully obtain for the firm of Thomas Kelly and Sons, from the provincial officers of the Province of Manitoba, having the care, custody, control and disbursing of public funds, with intent to de-

fraud His Majesty the King in the right of the Province of Manitoba in the Dominion of Canada, the sum, to-wit, One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00); that he obtained during the period aforesaid Seven Hundred Seventy-nine Thousand Nine hundred and Eighty-seven Dollars (\$779,987.00) of the moneys of the King on account of pretended extra work done and materials furnished in construction of caissons for the new parliament buildings at Winnipeg, upon false and fraudulent representations and statements that Thomas Kelly and Sons had put in upwards of Thirty-five Thousand (35,000) cubic yards of reinforced concrete, used One Million Two Hundred and Thirteen Thousand (1,213,000) feet of lumber, and Seven Hundred and Ninety-seven and Five-tenths (797-5/10ths) tons of iron rings and bolts, and that the fair and reasonable value for the concrete was Twelve Dollars (\$12.00) per cubic yard and for excavating Seven Dollars (\$7.00) per cubic yard, Forty Dollars (\$40.00) per thousand feet for the lumber, and One Hundred and Forty Dollars (\$140.00) per ton for the iron rings and bolts, the said Thomas Kelly then and there well knowing the fact to be that he had not put in said caissons to exceed Twenty-three Thousand One Hundred and Fifteen (23,115) cubic yards of concrete, or used to exceed, to-wit, One Hundred Thousand (100,000) feet of lumber, or, to-wit, Forty (40) tons of iron rings and bolts, and that the fair and reasonable cost and value of said extra work done and materials furnished, including a Ten per cent. (10%) profit to said contractors, did not then and there exceed Ninety-nine Thousand Two Hundred and Ninety-two Dollars and Fifty Cents (\$99,292.50); that said moneys, and other moneys, were so obtained by said false pretences and other false pretences, with intent to defraud His Majesty the King in the right of the Province of Manitoba, contrary to the laws of the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty.

That said Thomas Kelly, between the 1st day of May, 1913, and the 1st day of May, 1915, at Winnipeg, was also guilty of the crime of larceny or embezzlement, and the obtaining of money, knowing the same to have been embezzled, stolen or fraudently obtained, and at the said place and times did steal and embezzle and did also unlawfully receive valuable securities or other property belonging to His Majesty the King in the right of the Province of Manitoba which had theretofore been embezzled, stolen or fraudently obtained by means of an unlawful and fraudulent conspiracy, entered into between said Thomas Kelly, Sir Rodmond P. Roblin, then and there Premier of the Province of Manitoba, Walter H. Montague, then and there Minister of Public Works, James H. Howden, then and there Attorney General, George R. Coldwell, then and there Acting Minister of Public Works and Minister of Education, R. M. Simpson, Victor W. Horwood, then and there Provincial Architect, and others, to defraud His Majesty the King in the right of the Province of Manitoba out of large sums of money by means of false and fraudulent contracts for extras in the construction by the firm of Thomas Kelly and Sons, of which firm the said Thomas Kelly

was a member, of the new parliament buildings at Winnipeg, Manitoba, and by false and fraudulent estimates and statements of the amount and quantity of labor and materials necessary to make the changes desired, and false and fraudulent and exorbitant values for the same, and that by means of such false and fraudulent scheme of fraud and deception, entered into, participated in and carried out by said parties, said Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, fraudulently and feloniously obtained of the moneys of the King the sum of, to-wit, One Million Two Hundred and Fifty Thousand Dollars (\$1,250,000.00) in fraud of His Majesty the King in the right of the Province 219 & 220 of Manitoba and contrary to the laws of the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty.

Said crimes of perjury, obtaining money by false pretences, larceny or embezzlement and the obtaining of money, knowing the same to have been embezzled, stolen or fraudulently obtained, being embraced in a treaty for the extradition of criminals between the Government of said Kingdom of Great Britain and Ireland, pertaining also to the Dominion of Canada, a part of His Britannic Majesty's dominion, and the Government of the United States of America, concluded and signed at Washington, on the 9th day of August, 1842, the Supplemental Treaty concluded and signed July 12th, 1889, and the Supplemental Treaty concluded and signed December 13th, 1900, and

Whereas, an examination of the charges against said Thomas Kelly has been had before me, Lewis F. Mason, a United States Commissioner for the Northern District of Illinois, specially authorized by order of the District Court to perform all the duties of a Commissioner under the extradition laws and treaties of the United States, and it appearing to me, the said Commissioner, that there are sufficient grounds to believe said Thomas Kelly guilty of the crimes charged, and it being hereby found and adjudged that said Thomas Kelly is guilty as charged, now, therefore, in the name and by the authority aforesaid,

These are to command you, the Marshal, as aforesaid, to commit the said Thomas Kelly to the custody of the Keeper of the Jail of said Lake County, Illinois, and to leave with the Keeper of said Jail a certified copy of this writ, and to command you, the Keeper of the said Jail, to receive and keep the said Thomas Kelly to abide the order of the Secretary of State of the United States.

Witness my hand and seal this 11th day of November, A. D. 1915.

[SEAL.]

LEWIS F. MASON,

United States Commissioner for the Northern District of Illinois and a Commissioner Duly Authorized by the District Court of the United States for the Northern District of Illinois to Act as a Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from Justice of a Foreign Government under Treaty or Convention Between this and — Foreign Government.

(Endorsed:) Filed Nov. 16, 1915. T. C. MacMillan, Clerk.

221-223 *Transcript of Proceedings Before Lewis F. Mason.*

No. 2025.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the Matter of the Application for the Extradition of THOMAS KELLY, an Alleged Fugitive from Justice Under the Treaties of the United States and Great Britain.

Before me, Lewis F. Mason, U. S. Commissioner, complaint and affidavit was made this 2nd day of October, 1915, by Lewis E. Bernays, His Britannic Majesty's Vice Consul General at Chicago, Illinois, for Great Britain, charging in substance, that Thomas Kelly had within one year prior to the date hereof, been guilty of the crime of receiving money, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained; and, third, has within one year prior to the date hereof, to-wit, on the 26th day of March, 1915, been guilty of the crime of perjury, in the Province of Manitoba, Dominion of Canada, in His Britannic Majesty's Domain.

224 On October 2nd, 1915, issued warrant of arrest to John J. Bradley, U. S. Marshal, for the arrest of Thomas Kelly, which warrant was returned, endorsed as follows: "Received this warrant on the 2nd day of October, 1915, at Chicago, Illinois, and executed the same by arresting the within named Thomas Kelly at Chicago, Illinois, the 2nd day of October, 1915, and have his body now in court, as within I am commanded.

Dated Chicago, Illinois, October, 1915.

JOHN J. BRADLEY,
U. S. Marshal,
By T. C. SMITH, *Deputy."*

Marshal's fees, \$2.00.

On October 2nd, 1915, respondent, Thomas Kelly, apprehended and brought before the Commissioner at his office in the City of Chicago, and the complainant, Lewis E. Bernays, being represented by Mr. Clair E. More and the respondent being represented by Mr. Robert E. Crowe and Mr. Charles E. Barrett, thereupon, upon motion of attorney for complainant, hearing was continued until October 5th at the hour of 10:00 A. M. and mittimus was issued committing said respondent to the Lake County Jail, which mittimus was returned, endorsed as follows: "By virtue of this writ, I conveyed the prisoner therein named, to the jail of Lake County, Illinois, and there delivered him to the Keeper thereof, the 2nd day of October, A. D. 1915, this 2nd day of October, A. D. 1915.

JOHN J. BRADLEY,
U. S. Marshal, Northern District of Illinois,
By T. C. SMITH, *Deputy."*

Marshal's fees, 50c.

225 October 5th, 1915, respondent brought before the Commissioner by Deputy U. S. Marshal T. C. Smith, pursuant to continuance of October 2nd, and the complainant being represented by Mr. Clair E. More and Mr. A. W. Bulkley, and the respondent being represented by Mr. W. S. Forrest, thereupon motion of Mr. Bulkley, attorney for the complainant, hearing was continued until October 15th, at the hour of 11:00 A. M.

October 15th, 1915, respondent brought before the Commissioner by Deputy U. S. Marshal T. C. Smith, pursuant to continuance of October 5th and all parties being represented as before, upon motion of Mr. A. W. Bulkley, attorney for the complainant, complaint was dismissed against the respondent, and that he be discharged forthwith from custody.

226 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, Lewis F. Mason, a United States Commissioner for the Northern District of Illinois, do hereby certify that the foregoing case — lately pending before me; and that the papers accompanying this transcript are true copies and original papers in the said cause. Which transcript and papers are herewith returned into the District Court for the Northern District of Illinois, in pursuance of law.

In Witness Whereof, I hereunto set my hand and seal at the City of Chicago in the Eastern Division of the Northern District of Illinois, this 19 day of November, 1915.

[SEAL.]

LEWIS F. MASON,
United States Commissioner.

227 Before Lewis F. Mason, Esq., United States Commissioner,
Etc.

In the Matter of the Application for the Extradition of THOMAS KELLY Under the Treaties Between the United States and Great Britain.

UNITED STATES OF AMERICA,
Northern District of Illinois, City of Chicago, ss:

Lewis E. Bernays, His Britannic Majesty's Vice Consul General, at Chicago, Illinois, United States of America, being first duly sworn doth depose and say upon information and belief:

That one Thomas Kelly has within the period of, to-wit, one year prior to the date hereof, been guilty of the crime of obtaining money under false pretences; also, second, has within the period of, to-wit, one year prior to the date hereof, *has* been guilty of the crime of receiving money, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained; and, third, has within one year prior to the date hereof, to-wit, on the 26th day of March, 1915, been guilty of the crime of

perjury, in the Province of Manitoba, Dominion of Canada, in His Britannic Majesty's Domain, and

That warrants have been issued by the proper authorities of the Province of Manitoba, Dominion of Canada, and within the jurisdiction of his Britannic Majesty for Thomas Kelley, for the
 228 crime of obtaining money under false pretences, also for receiving money, valuable securities or other property knowing the same to have been embezzled, stolen or fraudulently obtained, also for perjury, as this affiant is informed and believes.

That said Thomas Kelly is guilty of the indictable offenses of obtaining money under false pretences, also of receiving moneys, valuable securities or other property, knowing the same to have been stolen, embezzled or fraudulently obtained, also of perjury.

That the said Thomas Kelly is a fugitive from justice from the Province of Manitoba, Dominion of Canada, and is now within the territory of the United States, as this affiant is informed.

That the offences of which the said Thomas Kelly is charged, are offences within the treaties between the United States and Great Britain, and

That this deponent's information and belief is stated upon telegraphic communications from the attorney general and police authorities of the Province of Manitoba, Dominion of Canada, to local authorities, requesting the arrest of said Thomas Kelly.

That a warrant has been issued for the apprehension and arrest of the said Thomas Kelly for said extraditable offences.

LEWIS E. BERNAYS.

Subscribed and sworn to before me this 2 day of October, 1915.

LEWIS F. MASON,

United States Commissioner for the Northern District of Illinois and a Commissioner Duly Authorized by the District Court of the United States for the Northern District of Illinois to Act as Commissioner Under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Government Under a Treaty or Convention Between This and Any Foreign Government.

229 The President of the United States to any Marshal of the United States or to any of the Deputies of any such Marshal or any or either of them:

Whereas, complaint has been made on oath under the Treaty and Supplement thereto, between the United States and the Kingdom of Great Britain and Ireland, concluded and signed at Washington, on the 9th day of August, 1842, and the Supplement-Treaty concluded and signed July 12, 1889, and the Supplemental Treaty concluded Dec. 13, 1900, before any one of the Commissioners appointed by the District Court of the United States for the Northern District of Illinois, and also a Commissioner specially appointed to execute the Acts of Congress, entitled, "An Act for giving Effect to Certain Treaty Stipulations between this and Foreign Governments

for the apprehension and delivery of certain offenders," approved August 12th, 1848, and of the several acts amendatory thereof and supplementary thereto, that one Thomas Kelly has heretofore within the period of, to-wit: one year prior to the date hereof, in the Province of Manitoba, Dominion of Canada, been guilty, first, of the crime of obtaining money under false pretences, second, of the crime of receiving moneys, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained, and third, of the crime of perjury on, to-wit, the 26th day of March, 1915, and that the said Thomas Kelly is a fugitive from justice of the Province of Manitoba and Dominion of Canada, and is now within the United States, and that the crimes of which the said Thomas Kelly has so aforesaid been guilty are offences within the Treaties between the United States and Great Britain.

230 Now, therefore, we command you forthwith to take the said Thomas Kelly and bring him before me, the said Commissioner, at my office, Room 807 in the Post Office Building, City of Chicago, or before the nearest Justice, Judge or Commissioner in the district in which the said Thomas Kelly is apprehended, authorized to act in any proceedings for the extradition of fugitives from the justice of a Foreign Government, as provided in Section 5270 of the Revised Statutes of the United States, in order that the evidence of the criminality of the said Thomas Kelly may be heard and considered, and if deemed sufficient to sustain the charge, that the same may be certified together with a copy of all proceedings, to the Secretary of State, that a warrant may issue pursuant to said Treaties.

Witness my hand and official seal this seventh day of October, A. D. 1915.

[SEAL.]

LEWIS F. MASON,

United States Commissioner for the Northern District of Illinois and a Commissioner Duly Authorized by the District Court of the United States for the Northern District of Illinois to act as a Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from Justice of a Foreign Government under a Treaty or Convention between this and any Foreign Government.

Return.

Received this Warrant on the 2nd day of October, 1915, at Chicago, Illinois, and executed the same by arresting the within named Thomas Kelly at Chicago, Illinois, the 2nd day of October, 1915 and have his body now in Court, as within I am commanded.

JOHN J. BRADLEY,

U. S. Marshal,

By T. C. SMITH, *Deputy.*

Marshal's fees \$2.00.

231 UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

The President of the United States of America, to the Keeper of the Jail of Lake County, in the State of Illinois, Greeting:

Whereas, On the 2nd day of October, 1915, Thomas Kelly was arrested on the sworn complaint of Lewis E. Bernays, His Britannic Majesty's Vice Consul General, charged with having, on or about one year prior to the 2nd day of October, 1915, within the jurisdiction of the Kingdom of Great Britain to-wit: Canada, committed the crimes of receiving money, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained; and, third, has within one year prior to the date hereof, to-wit, on the 26th day of March, 1915, been guilty of the crime of perjury, said crime being one enumerated and provided for in a treaty for the extradition of criminals between the Government of the aforesaid Kingdom and the Government of the United States, and

Whereas, The said Thomas Kelly has been arraigned before me, Lewis F. Mason, a United States Commissioner for the Northern District of Illinois, specially empowered by order of the district court of said district to perform all the duties of a commissioner under the extradition laws and treaties of the United States, and an adjournment of this matter has been taken now, therefore,

You Are Hereby Commanded, in the name and by the authority aforesaid, to receive the said Thomas Kelly, prisoner of the United States of America, in the jail of said Lake County, there to remain until discharged by due course of law.

Witness my hand and seal, this 2nd day of October, A. D. 1915.

[SEAL.]

LEWIS F. MASON,

U. S. Commissioner, Northern District of Illinois.

(Endorsed on the back:) 2025. 13419. Northern District of Illinois, Eastern Division. Before Lewis F. Mason, U. S. Commissioner. United States of America vs. —. In Re Thomas Kelly. Mittimus on Adjournment. Bail \$—. Lewis F. Mason, U. S. Commissioner.

Receipt of Jailer.

Received from John J. Bradley, Marshal of the United States for the Northern District of Illinois, the body of the within named prisoner, this 2nd day of October, 1915.

ELVIN J. GRIFFIN,
Jailer of Lake County, Illinois.

Marshal's Return.

By virtue of this writ, I conveyed the prisoner therein named to the jail of Lake County, Illinois, and there delivered him to the

Keeper thereof, the 2nd day of October, A. D. 1915, this 2nd day of October A. D. 1915.

JOHN J. BRADLEY,
U. S. Marshal, Northern District of Illinois.
By T. C. SMITH, Deputy.

Marshal's fees, 50c.

233 Before Lewis F. Mason, Esq., United States Commissioner, etc.

In the Matter of the Application for the Extradition of THOMAS KELLY under the Treaties between the United States and Great Britain.

UNITED STATES OF AMERICA,
Northern District of Illinois,
City of Chicago, ss:

Transcript of Proceedings.

The following is a stenographic transcript of the proceedings had in the above entitled matter before United States Commissioner, Lewis F. Mason, room 603 Federal Building, Chicago, Ill., at 2 o'clock P. M. October 5th, 1915, the following counsel being present:

Messrs. Bulkley and More (of the firm of Bulkley, More & Tallmadge) and Mr. R. A. Bonnar, appearing on behalf of the Canadian Government.

Messrs. William S. Forrest, Robert E. Crowe, Anderson, Sweetman and Phippen appearing on behalf of the respondent, Thomas Kelly.

Copy of Complaint.

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Lewis E. Bernays, His Britannic Majesty's Vice Consul General at Chicago, Illinois, United States of America, being first duly sworn, doth depose and say upon information and belief.

That one Thomas Kelly has within the period of to-wit: one year prior to the date hereof been guilty of the crime of obtaining money under false pretences; also second, has within the period of, to-wit, one year prior to the date hereof, has been guilty of the crime of receiving money, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained; and, third, has within one year prior to the date hereof, to-wit, the 26th day of March, 1914, been guilty of the crime of perjury, in the Province of Manitoba, Dominion of Canada, in His Britannic Majesty's Domain.

And that warrants have been issued by the proper authorities of the Province of Manitoba, Dominion of Canada, and within the jurisdiction of His Britannic Majestys for Thomas Kelly for the crime of obtaining money under false pretences, also for receiving

money, valuable securities or other property knowing the same to have been embezzled, stolen or fraudulently obtained, also for perjury, as this affiant is informed and believes.

235 That said Thomas Kelly is guilty of the indictable offences of obtaining money under false pretences, also of receiving moneys, valuable securities or other property knowing the same to have been stolen, embezzled or fraudulently obtained, also of perjury.

That the said Thomas Kelly is a fugitive from justice from the Province of Manitoba, Dominion of Canada, and is now within the territory of the United States, as this affiant is informed.

That the offences of which the said Thomas Kelly is charged are offences with- the treaties between the United States and Great Britain, and

That this deponent's information and belief is stated upon telegraphic communications from the Attorney General and police authorities of the Province of Manitoba, Dominion of Canada to the local authorities requesting the arrest of said Thomas Kelly.

That a warrant has been issued for the apprehension and arrest of the said Thomas Kelly for said extraditable offences.

(Signed)

LEWIS E. BERNAYS.

Subscribed and sworn to before me this second day of October, 1915.

LEWIS F. MASON,

United States Commissioner for the Northern District of Illinois and a Commissioner Duly Authorized by the District Court of the United States for the Northern District of Illinois to act as Commissioner under the Laws of the United States Concerning the Extradition of Fugitives from the Justice of a Foreign Government under a Treaty or Convention between this and any Foreign Government.

236 Mr. Bulkley: If the Commissioner please, I desire to ask a postponement of this hearing for the period of about two weeks, so as to enable the prosecution to get the necessary certified and exemplified copies of warrants, information and depositions, and in view of the fact that it involves a great many questions and a great many facts upon which testimony has been taken in Winnipeg, for weeks, I think that we can shorten the hearing here very much if we are granted that amount of time so as to arrange the documents and the evidence that will bear particularly upon the charges made here in this complaint, and, in other words, sort out the wheat from the chaff, so as to limit the hearing to that which is essential only. I was not aware when we were here on Saturday of the facts, further than incidentally, and I did not realize the necessity for so much preparation, and for these reasons I ask that the hearing be postponed for two weeks to enable us to get together the necessary papers and evidence, properly certified, and I think that it will shorten the hearing here very much by doing so.

Mr. Forrest: I would like to be heard on that, if the Commissioner please.

The Commissioner: Yes, I understand. What consular officer have you at Winnipeg?

Mr. More: Consul General, I think.

The Commissioner: Do you know, Mr. Forrest?

Mr. Forrest: I did not hear the question.

The Commissioner: I say, what consular officer is there at Winnipeg, from this government?

237 Mr. Bulkley: We have an officer there, if he is there but whether it is consul general or whether it is vice consul or deputy, I am not advised.

Mr. Forrest: I am informed by the gentleman on my left, that there is an American consul in Winnipeg.

Mr. More: Dillingham, he is the Consul General, isn't he?

The Commissioner: Is that his title? He is the superior or chief consul officer for that province, is he?

Mr. Sweatman: Yes.

The Commissioner: And his headquarters are at Winnipeg, are they?

Mr. Sweatman: Yes.

The Commissioner: And he is there?

Mr. Sweatman: So far as I know.

The Commissioner: He has not resigned?

Mr. Sweatman: No, he has not resigned.

The Commissioner: That is what I mean.

Mr. Sweatman: He is still in office there.

The Commissioner: There has been no successor appointed?

Mr. Sweatman: Oh, no, he is still in office, so far as I know, at present.

Mr. Bulkley: He is the Vice Consul, isn't he?

Mr. Sweatman: Well, I do not know about that.

The Commissioner: Mr. Forrest?

Mr. Forrest: I oppose the continuance, unless, if the Commissioner please, you admit Mr. Kelly to bail in the meanwhile. Your

238 Honor has the power to admit him to bail under extraordinary circumstances. In Wright versus Henkel, 190 U. S.

page 40, the Supreme Court decided that the Commissioner, or the Circuit Court or the District Court, had the power to admit him to bail, and then in re Mitchell, 171, Fed. Rep. 289, the party sought to be extradited was actually admitted to bail, but only temporarily.

The Commissioner: I am familiar with both of those cases, Mr. Forrest.

Mr. Forrest: What is it?

The Commissioner: I say I am familiar with both of those cases.

Mr. Forrest: Yes. And the rule, and it is a wise rule—I have no disposition to criticise it in any way, is that a person should not be admitted to bail except under extraordinary circumstances, and I suggest the circumstances now presented to the court are extraordinary. Why?

May I have the complaint? Your Honor has not jurisdiction under this complaint. You have a man under arrest and deprived of bail under a complaint that recites that Kelly has, within the period of, to-wit: one year prior to the date hereof, been guilty of the crime of obtaining money under false pretences—omitting, if the Commissioner please, unimportant phrases?

The Commissioner: Yes.

Mr. Forrest: Also guilty of the crime of receiving money, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained, and has been guilty of the crime of perjury—all of these crimes the allegation is that he has been guilty of in the Province of Manitoba Dominion of Canada, that warrants have been issued by the proper authorities of the Province of Manitoba, Dominion of Canada, and within the jurisdiction of His Britannic Majestys for Thomas Kelly for the crime of obtaining money under false pretences, and for those

239 other crimes mentioned above. Then the allegation is that Kelly is guilty of the indictable offenses, mentioning the three; then that Kelly is a fugitive from justice from the Province of Manitoba, then that the offenses of which the said Thomas Kelly is charged are offenses within the treaties; then that this deponent's information and belief is stated upon telegraphic communications from the Attorney general and chief authorities of the Province of Manitoba, Dominion of Canada, to local authorities, requesting the arrest of Kelly; that was sworn to on the 2nd day of October, 1915. This is the 5th.

Now, there is a string of legal conclusions. Now, there is not a single doubt but that a writ of habeas corpus would lie, and that under this complaint, if the Commissioner please, the court above would hold that your Honor was without jurisdiction and would discharge Mr. Kelly, but he could at once be rearrested.

Now, that complaint is made, if the court please, under the following circumstances.

Mr. Kelly has been, during the greater part of the past three months, at his summer home on the Detroit Lakes, Minnesota, and about three months ago Mr. Anderson, his counsel in Canada, who is here, informed the prosecuting attorney—I do not know the name of the prosecuting attorney at Winnipeg—what is his name, Mr. Anderson?

Mr. Anderson: The Deputy Attorney General.

Mr. Forrest: Informed the Deputy Attorney General that Mr. Kelly was in the United States, was at St. Paul, Minnesota, awaiting any attempt to extradite him to the Dominion of Canada,

240 and he could be found there at any time. Mr. Butler, Mr. Kelly's local counsel, at St. Paul, Minnesota, I am informed, called upon the British Consul at St. Paul, Minnesota, and also informed the British Consul that Mr. Kelly was there, and if he was away at any time temporarily, he would produce him upon very short notice. The Dominion of Canada has had that information officially for three months. During those three months it has had ample time to prepare these papers that they say now they

wish two weeks' time within which to prepare, so that for all of those reasons I object, if the Commissioner please, to the continuance of the case for two weeks, unless in the meanwhile Mr. Kelly is admitted to bail, and I furthermore suggest, if the Commissioner please, that if your Honor does continue the case for two weeks, that your Honor would be justified in finding that the circumstances are so extraordinary that in the meanwhile Mr. Kelly might be admitted to bail.

Now, if Mr. Kelly has, in the way in which I have stated, informed the proper authorities of the Dominion of Canada and the British Consul at St. Paul from time to time, during the past three months, that he was in the United States and he would be produced whenever he was wanted and would be produced at St. Paul——

The Commissioner: At St. Paul, and not in Canada?

Mr. Forrest: At St. Paul and not in Canada.

The Commissioner: Very well.

Mr. Forrest: *That* is considerable evidence, tending to show, if the Commissioner please, that Mr. Kelly does not intend to flee from any court which has jurisdiction of any extradition proceedings. The circumstances do show that he did not intend to return to Canada except as the result of extradition proceedings; that he

241 had a right to do. Now, inasmuch as those authorities have been informed of those facts during the past three months, it seems to me, as a mere matter of prudence, that it is safe to admit him to bail, and inasmuch as they have been informed for the past three months that he was there and would not leave, and they had an opportunity to prepare those papers, and they have been informed that it would be necessary—that is, impliedly informed that it would be necessary for them to produce such papers and to conduct those proceedings, it seems to me, if the Commissioner please, that they ought not now to be entitled to a continuance of two weeks, unless Mr. Kelly is admitted to bail.

The Commissioner: What do you say as to that, Mr. Bulkley?

Mr. Bulkley: With reference to the bail, if the Commissioner please——

Mr. Forrest: One minute. Just let me interrupt you, will you?

Mr. Bulkley: Certainly.

Mr. Forrest: Mr. Anderson, if the court please, would like to ask the privilege of making a statement to your Honor.

The Commissioner: Very well.

Mr. Forrest: Very well, Mr. Anderson.

The Commissioner: From where?

Mr. Anderson: From Winnipeg.

Mr. Forrest: Mr. Anderson is from Winnipeg, if the Commissioner please, a member of the Bar of the Dominion of Canada.

The Commissioner: Very well.

Mr. Anderson: Perhaps it is a little unusual that a member of a foreign bar should ask to appear before you, but all I want to do is to make a statement of the facts as I know them, and perhaps

242 it will be easier, sir, for you to understand them, than by my telling them to Mr. Forrest and having him tell them to you.

The Commissioner: Very well.

Mr. Anderson: I have know- Mr. Kelly for fifteen years, and Mr. Kelly during that time has had a summer residence at Detroit Lakes, Minnesota, and goes there with his family each year. This year has been no exception, if the Commissioner please. He went there this year and has remained there during the whole of the summer. The question of Mr. Kelly's being required back in Winnipeg to answer certain charges which have been current there for some time, has been public for some considerable length of time. In order that you may understand the situation thoroughly, I think it would not be trespassing too much just to take a moment or two of time to explain the situation, which perhaps you should understand in this connection. I may tell you that the Royal Commission or in other words a Commission of Inquiry, was appointed by the government, by the Lieutenant Governor of the Province of Manitoba to inquire into the charges that were made with reference to the erection of the new Parliament buildings in the city of Winnipeg; that Commission was entrusted with extremely wide authority, the summoning of witnesses upon oath and compelling them to appear and testify, and other persons who were charged of having been guilty of offenses in connection with the erection of the buildings were called there to testify, in other words, to give evidence against themselves. That, of course, is foreign to all ideas of your jurisprudence and of ours. The question as to the ability of that Commission was raised, was raised by Mr. Kelly in an action, and that action is now pending, and is on its way to the Privy Consul and I may say that the local court, with dissenting judges—the local courts refused an injunction to restrain the Commission from proceeding, but there was a dissenting judge—

243 ment and that question is now on its way to the Privy Consul in order to determine whether that Commission had or had not the right to examine witnesses under those circumstances. Mr. Kelly has always taken the position that it had not that right, and I frankly tell you, sir, that after Mr. Kelly went away and took up his home in Detroit Lakes, one of the reasons why he did not go back to Winnipeg was because he took the position that that Commission had no right to examine him under those circumstances and he wanted to test their right to do so before he did go back, but Mr. Kelly has never had any intention of escaping from justice. Mr. Kelly, as Mr. Forrest has pointed out to you, is not a fugitive from justice, in the ordinary sense of the word, because when the question arose as to his return he communicated with the law officers of the Crown, including Mr. Bonnar, who is representing the Crown here to-day, and I told him that Mr. Kelly was ready at any time to face extradition proceedings; that he did not think under the circumstances that it was proper that he should go back to the city of Winnipeg, but that he was ready at any time, if the prosecution wanted to bring it, to appear before any extradition commissioner

in the state of Minnesota where he happened to be residing at the time. Mr. Kelly owns a place there, and practically has a domicile there——

Mr. Forest: At Detroit Lakes?

Mr. Anderson: At Detroit Lakes, Minnesota.

Mr. Forrest: Yes.

Mr. Anderson: And I have, on more than one occasion, told the officers of the Crown that just as soon as they are ready to proceed with their prosecution, that Mr. Kelly would be produced there. Now, Mr. Kelly came down to Chicago, the other day on business and while here was arrested, and that is the explanation of
244 his being now before you. It was not with any intention of escaping or getting away, and it never has been his intention, so far as that is concerned. If the circumstances of the case justify extradition, why Mr. Kelly has always been ready and willing to meet them, but the doings are very extraordinary in that respect, and I just want to thank you, sir, for giving me the opportunity to be heard before you.

The Commissioner: I was going to suggest, that he probably heard of Chicago as a summer resort.

Mr. Anderson: I beg your pardon, sir.

The Commissioner: I say, he probably heard of Chicago as a summer resort.

Mr. Anderson: Possibly.

Mr. Forrest: If the Court please, he registered as Thomas Kelly at the Blackstone Hotel in Chicago.

The Commissioner: Mr. Bulkley?

Mr. Bulkley: I would like Mr. Bonnar to have the privilege of replying to Mr. Anderson.

The Commissioner: I think that would be courtesy.

Mr. Forrest: No objection.

The Commissioner: Very well.

Mr. Bulkley: Mr. Bonnar represents the Attorney General's office, if the Commissioner please.

The Commissioner: Yes.

Mr. Bonnar: Replying to Mr. Anderson, I would just like to state with reference to the Royal Commission that was proceeded with at the City of Winnipeg, and before which he has made the suggestion that Mr. Kelly was to appear as a witness, and that he left the country so that he would not be called as a witness before that Royal Commission, that the Royal Commission has made its interim report to the government, and I might tell you and

Mr. Anderson now, and I think I can get it on absolute
245 authority, such as would satisfy him, that Mr. Kelly would not now be called before that Royal Commission, because he has been charged with crime, and after that charge has once been made he would not be called as a witness before that Royal Commission, and if that is the reason why he is remaining away from Canada, then there is no longer any reason why he should not return to Canada and answer these charges which are before you now.

Now, Mr. Anderson has told you about speaking to the Crown officers in reference to Mr. Kelly's surrendering himself. We had information which required very sudden action on the part of the government that Mr. Kelly was about to proceed on his way to South America so that we could not extradite him, and we thought that it was absolutely necessary in the interests of justice, that we should detain him at the city of Chicago and he was so detained.

Now, as to the production of him at St. Paul. Some conversation did take place between Mr. Anderson and myself concerning that, but on one occasion I did telephone and ask Mr. Anderson if he was now ready to produce his client at St. Paul. At that time we had lost track of Mr. Kelly, and I asked Mr. Anderson then if he could tell me where he was and when he could produce him, and he was unable to answer me either question. The next time that we run across Mr. Kelly is in the city of Chicago, and the information we had was that he was proceeding to South America. So that we thought that we should act, and we are now here and ready to act and proceed as soon as we can get our evidence in shape, as is required by this form, which will be done as quickly as it is possible to do so. We had thought, and we are not sure yet, that we might have to proceed to Montreal in order to get the proper certificates.

If so, that would necessarily take some time. We will proceed with the very greatest rapidity that is within our power to get the evidence in shape in order to show this court that Mr. Kelly should be returned to Canada to answer the charges pending against him.

Mr. Forrest: Mr. Bonnar, so as to get the matter before the court, is it a fact, then, that you were informed about three months ago that Mr. Kelly——

Mr. Bonnar: No.

Mr. Anderson: It is not so long ago as that.

Mr. Forrest: What?

Mr. Anderson: It is not so long ago as that.

Mr. Forrest: How long ago?

Mr. Bonnar: It is since the Interim Report of the Royal Commission.

Mr. Anderson: No.

Mr. Bonnar: Yes, it is since that time.

Mr. Anderson: No, before that.

Mr. Bonnar: And since that time, I may say, that we have been proceeding against others before the court, and that case is just about concluded, the preliminary hearing, and we could not give Mr. Kelly our undivided attention while we were attending to some of the others.

Mr. Forrest: The Interim Report is dated August 15th, I believe.

Mr. Bonnar: I do not know.

Mr. Forrest: Will you please tell the court whether it is not a fact that upon further investigation, since you came here, that you have learned affirmatively, that Mr. Kelly was not going to South America?

Mr. Bonnar: I have not.

Mr. Forrest: Did you get any information of any kind tending to confirm your information, since you have come here, that he was going to South America?

247 Mr. Bonnar: I do not know, I have not been inquiring. I am simply here as counsel; I am not here to testify.

Mr. Forrest: Mr. Anderson says that he would like to reply if the Commissioner please.

The Commissioner: Very well.

Mr. Anderson: Just one statement, that Mr. Bonnar made with reference to that telephone conversation. Mr. Bonnar did have that telephone conversation with me, but the real reason, and the reason I gave Mr. Bonnar why I could not produce Mr. Kelly at the time, was because I happened to have a very important engagement just then that would last over a week or ten days, but I told him that he need not worry, that so far as Mr. Kelly was concerned he would be produced just as soon as I got through with that engagement.

The Commissioner: You knew where he was at that time?

Mr. Anderson: I understood he was on his way to New York, but I told Mr. Bonnar that I did not know precisely where he was.

The Commissioner: And about what date was that?

Mr. Anderson: Well, I should say that was about a month ago. I cannot locate the time precisely, but I should say that was about a month ago.

The Commissioner: About the 1st of September?

Mr. Anderson: That was the time he was in New York, four weeks ago.

The Commissioner: Since the Interim Report?

Mr. Anderson: Oh, yes. The Interim Report was on the 15th of August, yes.

The Commissioner: Yes.

Mr. Forrest: If the court please, that is the Interim Report.

The Commissioner: That is a curiosity.

248 Mr. Forrest: That states that is the Interim Report, which of itself suggests that the Royal Commission contemplates further proceedings, otherwise it would not have used that word. I have here, if the Commissioner please, the return portion of the ticket upon which Mr. Kelly came to Chicago (Handing the ticket to the Commissioner) so that when He left Minnesota he purchased a round trip ticket, Mr. Kelly—oh, no, that is a sleeping car ticket.

The Commissioner: Read the ticket.

Mr. Forrest: I did not read it. Oh, yes, it is a ticket from the Pullman Company, Chicago to St. Paul, 6:40 P. M. That shows, if the Commissioner please, that the man had purchased a ticket intending to return to St. Paul, so that it was a little stronger in fact than I intended to put it.

The Commissioner: Mr. Bulkley, as to the date of continuance and bail?

Mr. Bulkley: With reference to the bail, that, as you know, rests in the legal discretion of the Commissioner, under the rulings

of the court, and you have been through that, and I know you have been through it and know what the decisions are. It does not strike me that there are any unusual circumstances here that would warrant the granting of bail in accordance with the lines laid down by the authorities.

The Commissioner: The only case that it has been granted in, as Mr. Forrest states, was an extraordinary case, where, as I remember it, the parties prosecuting or desiring the return of the respondent, were also the plaintiff in the legal action pending in the United States courts.

Mr. Forrest: In the New York Supreme Court.

The Commissioner: In the New York Supreme Court, and in that case the Commissioner or District Judge permitted his release for three days to attend that trial on a bond.

249 Mr. Forrest: Before you decide, I would like to be heard, if the Commissioner please.

The Commissioner: Yes.

Mr. Bulkley: There are no such grave or extreme conditions here. That lawsuit, it further appeared, involved his whole fortune.

The Commissioner: Yes, I remember.

Mr. Bulkley: And here there is not anything except the personal convenience of the prisoner, that all that is involved here, if the Commissioner please. I do not wish, and I know that the Canadian Government does not wish to make it any more burdensome to Mr. Kelly than is necessary, but it is necessary for the government to get together the facts and get them properly certified for the purpose of presenting the question of extradition in a proper manner to this court.

The Commissioner: With this matter before the Commission there for so many weeks and months, and with a consular officer of the United States in the same town or city, I think two weeks is rather a long time for a continuance, and I am rather disposed to a shorter time. Then, on the question of bail, do you want to be heard further, Mr. Forrest?

Mr. Forrest: After Brother Bulkley gets through, if the Commissioner please.

The Commissioner: Yes. That is my present state of mind as to the length of continuance.

Mr. Bulkley: We have asked that because it struck me that we would be pretty certain to have everything ready so that we could go ahead without any delay at that time, rather than to ask a shorter time and then find that we could not get ready, and have to ask for a further postponement, and I want to make one bite of it. Now, this Royal Commission report was not returned. I see it is dated the 24th of August.

250 The Commissioner: The date of its publication or the date of—

Mr. Bulkley: No, the date that it is signed, purports to have been signed.

Mr. Sweatman: It was published practically as soon as it was signed. That was the date Mr. Kelly was in New York.

Mr. Bulkley: A reading of that shows that there has been very extensive investigation into the affairs regarding the construction of the Parliament buildings in Winnipeg, and these charges against Mr. Kelly and other parties grow out of that investigation. Warrant were issued for Mr. Kelly and the other parties after this Royal Commission report, charging them with certain crimes. Now, then, in order to—of course, if we wanted to bring down—if we wanted to bring down the certificates and evidence that was before that Royal Commission and bring that down here, we could do it in two or three days, but it would be a monument and it would not be fair to your Honor or to the defense or to anybody else, but it would contain the evidence. Now, then, what we desire to do is to get the evidence in proper shape for extradition purposes, and the essentials of it, and only the essentials.

The Commissioner: That will mean the bringing down of this immense volume of testimony.

Mr. Bulkley: That will mean calling certain witnesses and having them testify, give depositions before the magistrates who issued this warrant, of the essential facts necessary, which they have already testified to in this great volume of testimony, and which were before the Commissioner that issued these warrants. The Commissioner that issued these warrants was one of these Royal Commissioners that sat on this Commission, and it is a matter of preparation, that is all.

251 The Commissioner: If you had this entire record and certified to and brought here, couldn't you then prepare it here in Chicago quicker than you could—

Mr. Bulkley: I couldn't prepare it half as quick, if the Commissioner please.

Mr. Forrest: Now, if the court please, they have had the entire summer within which to make the preparation which they now ask your Honor two weeks to enable them to make out. They have been informed of the whereabouts of Mr. Kelly, that is conceded. The counsel there in Canada and the counsel here have been in communication with the government, they have seen fit not to make that preparation, so that they have not been diligent, and that is one—

The Commissioner: Well, just a minute, if you please Mr. Forrest.

Mr. Forrest: Yes.

The Commissioner: Counsel says they have been prosecuting other cases there and devoting their time to people who were within the jurisdiction.

Mr. Forrest: Yes, but there is never simply one counsel that is engaged in that. I presume the Prosecuting Counsel's office *is* there is something like the Prosecuting Counsel's office here, and there are a great many persons there who are competent to prepare these depositions. That is one. Now, then, with reference to bail, it is a matter of sound, legal discretion. The court has decided that you have the power to do that. Now, what should dictate or what

should control that discretion? It is important that Mr. Kelly should be here, there is no doubt about that. Now, then, is it certain if the Commissioner please, that Mr. Kelly would be here although he went released upon his own recognizance? That is the only purpose of looking the man up. The only purpose of
 252 denying bail in such a case as this, is so that the United States Government may certainly have him in its custody, so that it may perform its treaty obligation at the proper time.

Now it appears that the Government of Canada has been informed during the past three months of his whereabouts. It furthermore appears from what has appeared in the press, and I presume that is true too, that there has been a representative of the Dominion of Canada who has been constantly with Mr. Kelly. Mr. Kelly must have been followed to the city of Chicago, and your Honor noticed that I put to Mr. Bonnar the question as to whether or not since arriving in Chicago he has discovered whether or not Mr. Kelly was really going to South America. Now, he may have been so informed of course. These rumors keep coming, no doubt about that, and my question incites opposing counsel to state any rule they may have heard or circumstance that may have been communicated to them which tends to show whether or not the information conveyed to them about his contemplated trip to South America was true or false.

Taking it altogether, your Honor, must come to the conclusion that that rumor or that communication was simply based on surmise—detectives frequently have all sorts of surmises, so that they have been informed that he would be here, and they would surrender him at any time in St. Paul, and now here, if the Commissioner please, he comes at the present time, and his counsel say to you that they have no objection to two weeks continuance provided that Mr. Kelly shall not in the meanwhile be confined to the County Jail.

Now, I suggest that your Honor knows, beyond peradventure or has reason to believe beyond peradventure that Mr. Kelly
 253 will be here two weeks hence, so why should he be locked up in the meanwhile?

I say then, if the Commissioner please, take it for all and all, it is an extraordinary circumstance, *it is an extraordinary circumstance*, if the court please, that the Government of the Dominion of Canada should have been informed from time to time during the past three months as to Mr. Kelly's readiness; it appears that Mr. Kelly had a good human reason for departing, temporarily from Canada, namely so that he should not be subjected, if the court please, to that annoyance before the Royal Commission. That is a human reason. That shows, if the Commissioner please, why he should want to get out of Canada, temporarily, and it appears that he only stepped over the line, and it appears that he has had three months or at least more than three months, to go to South America, if he wished to go there.

Now, it appears that during the past month there was a conversation, or about a month ago, between the representatives of the Dominion of Canada and Mr. Kelly with reference to Mr. Kelly's

production, and the gentleman said that he could produce him at that time. They are unable to give your Honor information tending to show that he was bound for South America. He was arrested, and undoubtedly he must have been searched, I do not know whether he was or not, but his baggage must have been looked into, and he must have been followed. But here we find, if the court please, upon his person this return ticket purchased before he was arrested, tending to show that he was going back.

So, if the Commissioner please, all of the evidence tends to show that he intended to return to St. Paul where he intended to remain until he was arrested. That shows, I suggest to your Honor, that

254 he did not intend to flee; he did not intend to escape permanently from any prosecution in Canada, and I suggest, if the Commissioner please, that your Honor now knows that if you bail him for two weeks that he will be here at that time, and for that reason, if your Honor continues it at all I would like to have your Honor bail him until the gentlemen on the other side are ready to proceed. That is all, if the Court please.

Mr. Bonnar: If I may again speak to you?

The Commissioner: Yes.

Mr. Bonnar: On my return to Winnipeg I could have the evidence taken before the Royal Commission certified to by Sir Hugh John McDonald, who sat on that Commission, and the magistrate who had issued the warrants for Mr. Kelly's arrest, being one and the same person, I could have that evidence certified to by Sir Hugh John McDonald and forwarded to you in a very short time, but I would very much dislike to inflict that evidence on you provided you had to read it, because it would take at least, if you are a fast reader, ten days to read it, and it could take you thirty more before you could possibly understand it, unless you are superhuman.

The Commissioner: There is no claim to a virtue of that kind.

Mr. Bonnar: Therefore, I would rather save you that trouble, because I have been through it and I have had my difficulties with it, and I do not wish to impose upon anybody else.

Mr. Forrest: And you have some consideration for the rest of us?

255 Mr. Bonnar: I have some consideration for the rest of you gentlemen. I think now, with the knowledge that I have of the facts disclosed, that I could reduce it to such form that it would be easy for you to read and also possibly interesting for you to read.

Now, the whole question here, it seems to me to be one—can we establish that case which requires that Mr. Kelly should go back to his country to answer his accusers or can we not?

The principle which we follow in our country has always been that this country demanded from us a man fleeing from you should remain, not in comfortable surroundings, but in the ordinary surroundings, and he remained there, and bail has absolutely always been refused, because it was not a case that was considered should be bailed. Now, that has been the holding of the judges in our courts, with only one exception, and that was a case in which the prosecuting counsel agreed that he should be admitted to bail because it was

thought that the demanding country was going to abandon the application for his return.

Mr. Anderson: Well, supposing the demanding counsel for the Crown in this case will consent to the application of Mr. Forrest for bail?

Mr. Bonnar: I don't think I would be doing my duty to do so.

Mr. Forrest: If the court please, there is a gentleman present—your Honor has a very wide discretion in the matter here now of admitting him to bail and to hear evidence—there is a gentleman present who, I am informed will, upon his oath, state to your Honor that he spoke with this detective who followed Mr. Kelly down here and who caused his arrest here, and he asked that gentleman why he did not arrest Mr. Kelly in Minnesota, and that gentleman
256 who followed Mr. Kelly here and caused his arrest here, stated that he did not arrest him in Minnesota because he was instructed not to arrest him until he got out of Minnesota.

Mr. Bulkley: That only goes to show that the government may have had some reason for not wanting to try the case in Minnesota.

The Commissioner: It puts me in rather a difficult position, gentleman, in disposing of this matter. I always consider the personal comfort of a respondent or defendant, and in this case it is particularly hard where it is a case of confinement of one accustomed to living well, with the comforts of life, and one to whom confinement would be specially irksome.

The discretion placed in me, indicated by a good many of the reports, the Supreme Court says must be exercised most carefully, with great scrutiny of the facts and circumstances, and there has arisen in this country only one case in which any court has felt that the circumstances warranted—and that is the case cited by Mr. Forrest, for only three days, the release of the respondent on bail.

Counsel for the Crown indicated that by reason of the great amount of testimony that it would be irksome to us to hear it, and that it is for our benefit that he wants two weeks, and not for his own. For my part I am willing to be put to the disadvantage and labor a little further so that this may be disposed of earlier, and so that the respondent, if he is to be discharged, may be discharged more promptly, and I would suggest to counsel that a week to proceed to Canada to get this testimony, even if you have to bring it in
257 bulk and abstract it as we go through it, those parts that are pertinent, then if it appears that you are unable to get the certificate of the highest Consular officer in your state, I have no doubt that Mr. Forrest will waive the mere signature of that officer. Am I presuming?

Mr. Forrest: I don't know, if the court please. I have not been authorized to waive anything here, and I have not consulted with my client respecting that.

The Commissioner: Well, in the event of going to Montreal to get an officer, two more days.

Mr. Bulkley: I would suggest, if the Commissioner please, to make it ten days, and then we will try to get it here.

The Commissioner: Two days from Montreal to Winnipeg, and a day to Chicago.

Mr. Forrest: Can't I get you gentlemen to consent that my client may go out on bail? He will be here. That is, I think he will be here, I don't know. Of course, I am speaking now as a lawyer—I did not want to put it in that way. No lawyer can vouch for a client by saying he will be here.

The Commissioner: I know you would be here.

Mr. Anderson: There is no doubt about it, Mr. Commissioner, that he will be here.

Mr. Bulkley: If you will make it ten days, we will make extra exertion to get everything here at that time.

Mr. Bonnar: Or if he will return with us?

Mr. Bulkley: Yes, he can get bail up there without any
258 difficulty.

The Commissioner: I guess that is not acceptable to counsel, gentlemen.

Mr. Bonnar: The Royal Commission can adjourn if the Commissioner please, and when it adjourns——

Mr. Bulkley: We can assure you that the Royal Commission don't want him and won't call him.

Mr. Forrest: Unfortunately the gentlemen do not control the Royal Commission.

The Commissioner: Is the Royal Commission made up of lawyers or civilians?

Mr. Anderson: Of judges.

The Commissioner: Made up of judges?

Mr. Anderson: Yes, made up of judges, of two judges and one police magistrate.

Mr. Forrest: They have got a Royal interim in there.

Mr. Anderson: The record shows upon its face that it was made——

Mr. Forest (interrupting): They say they want Mr. Kelly.

Mr. Bulkley: It would be like Mr. Bonnar said, absolutely disastrous to the government, after charging him with a crime, to then call him as a witness, under any form of commission or in any proceeding.

Mr. Forrest: Well, now, will you please tell the Commissioner how that would be disastrous to the government?

The Commissioner: Disastrous, probably, to the prosecution of this defendant. That is what Mr. Bulkley means.

Mr. Forest: What is that.

259 The Commissioner: Disastrous to the prosecution of this defendant, if he were called before it and required to testify.

Mr. Forrest: It couldn't possibly in any way be disastrous to the government, if the Commissioner please. It couldn't prejudice the government in any way.

The Commissioner: In their case against this respondent?

Mr. Forrest: Yet, they couldn't prosecute him in any way. There is not any immunity statute up there, and how would it prejudice?

Mr. Bonnar: My opinion is, with all due respect to the learned gentleman's opinion, my opinion is that it would bar prosecution.

The Commissioner: Have you any immunity statute in Canada, Mr. Bonnar?

Mr. Bonnar: British common law would bar him.

Mr. Anderson: Not in regard to extradition.

Mr. Forrest: Now, if the Commissioner please——

The Commissioner: Just one at a time. We have all the afternoon, gentlemen.

Mr. Bonnar: I was simply going to suggest this, if the Commissioner please, that if the gentlemen are not satisfied with what I said, I think if that is the only thing that deters Mr. Kelly from returning to our country, that I can easily get for him and for them that assurance, not only from the Chief Justice of our Province but from the Attorney General of our Province, that if he returns he will not be called before the Royal Commission, now that he is charged with crime. That surely ought to be satisfactory.

260 Mr. Anderson: It is too late to make that offer, that is all.

Mr. Forrest: The only way, if they call him before the Commission and require him to answer questions, of course none of the testimony which he gives in response to such questions would be admissible in evidence against him.

Mr. Bonnar: Pardon me, it would. There is no statute applying to the Royal Commission.

Mr. Forest: No statute?

Mr. Bonnar: No.

The Commissioner: Well, I regret the situation, but for practical purposes——

Mr. Forrest: No objection to accommodating the gentleman from Winnipeg, if the Commissioner please, but we would like to have him accommodate our client.

The Commissioner: I wish I could. I always regret this situation.

Mr. Forrest: Well, your Honor has the power to do so.

The Commissioner: I know it, but the facts and circumstances as presented here, do not, to my mind, warrant it. To-day is the 5th of October. The 15th of October is Friday, at 10 o'clock or at 2 o'clock, gentlemen?

Mr. Forrest: How?

The Commissioner: At 10 o'clock or at 2 o'clock on October 15th, which?

Mr. Forrest: Let us make it at 10 o'clock, and I presume that will not inconvenience any of the gentlemen on the other side, if the Commissioner please?

261 The Commissioner: Arriving here the night before.

Mr. Bulkley: No, 10 o'clock will do.

The Commissioner: Now, if it is possible for you to return before then, prepared, I think in fairness and justice to this respondent, that an effort should be made, and notify me so that counsel can be notified, and the order of continuance can be changed to an earlier date.

Mr. Bulkley: I would be very glad to do that, if the Commissioner

please, if I can get those papers back here before that time, I would be glad to do that.

Mr. Bonnar: Upon my return to Winnipeg I will have them prepared as speedily as possible and have them returned to you as speedily as possible.

Mr. Forrest: I can tell you how we can save time on this. Is there any objection to sending me a carbon copy, as you prepare the testimony, as you go along, without a certificate, at my expense?

Mr. Bulkley: Oh yes, we will give you a copy of it, certainly.

Mr. Forrest: As they are preparing it up there.

Mr. Bulkley: Oh, yes.

Mr. Bonnar: Yes, we will furnish it.

Mr. Forrest: If you do not object to it.

The Commissioner: The matter will stand adjourned to October 15 at 10 o'clock A. M. subject to an earlier date, if you return.

Mr. Forrest: If the court please, I wonder if I could obtain from the court, in some way, a suggestion to the sheriff of Waukegan, that he need not keep him confined, if he will keep some person with him?

The Commissioner: Let me talk with you about that, Mr. Bulkley.

Mr. Forrest: This is an aged man, if the Commissioner please, and he is a man of very active habits, and confinement is very dangerous.

Mr. Bulkley: I do not object to it.

Mr. Forrest: They do not object to it.

Mr. Bulkley: Anything that is reasonable.

Which were all the proceedings had at the time and place above stated.

(Endorsed:) Filed Nov. 19, 1915. T. C. MacMillan, Clerk.

263 And on to-wit: the sixteenth day of November, 1915, there was filed in the clerk's office of said court in said entitled cause a certain Supplemental Petition and Notice of Thomas Kelley, Petitioner. Said Notice and Petition are in words and figures following to-wit:

In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 32288.

In the Matter of the Petition of THOMAS KELLY for Habeas Corpus and Certiorari.

To Messrs. Almon W. Bulkley and Claire E. More, Attorneys for Horace D. Nugent, British Consul General:

Please take notice that at two o'clock P. M. of to-day, November 16th, 1915, or as soon thereafter as counsel can be heard, in the said

court before the Honorable Kenesaw M. Landis, Judge, we shall present the petition and motion, copy of which is herewith served upon you.

MILLER, STARR. BROWN,
PACKARD & PECKHAM,
Attorneys for said Thomas Kelly.

Received copy of the above notice together with copy of petition and motion this 16th day of November, 1915.

A. W. BULKLEY.
C. E. MORE.

264 In the District Court of the United States for the Northern District of Illinois, Eastern Division.

No. 32288.

In the Matter of the Petition of THOMAS KELLY for Habeas Corpus and Certiorari.

And now comes the said petitioner, Thomas Kelly, by his afore-said counsel, and shows to the court that on the evening of the 13th day of November, 1915, and after the filing herein of the said petition for habeas corpus, the said United States Marshal, John J. Bradley, acting under the said warrant of commitment or mittimus of the said Lewis F. Mason, United States Commissioner, of November 11th, 1915, a copy of which is attached to the said petition for habeas corpus as Exhibit "A" herein and made a part hereof, did commit your petitioner to the custody of the keeper of the jail of Lake County, Illinois; and that the said keeper of the said jail did in pursuance of said commitment receive and now has your petitioner in his custody; that the keeper of the said jail of Lake County, Illinois, is Elvin J. Griffin, the sheriff of said Lake County, that while some question has, as your orator is informed and believes, arisen as to whether the said United States Marshal, or the said keeper of said

265 jail of Lake County, Illinois, has the custody of your petitioner under the terms of said commitment, your petitioner is advised that the said keeper of said jail, the sheriff of said Lake County, has such custody. That as your petitioner is informed and believes, the clerk of this court still has in his custody and control unissued the writ of habeas corpus which was by the order of this court directed to be issued.

Your petitioner therefore prays that this petition may be taken as a supplement or amendment to the petition for habeas corpus heretofore filed herein and that the writ of habeas corpus herein may issue, out of and under the seal of this Honorable Court, directed to the said Elvin J. Griffin, Sheriff of said Lake County and keeper of the jail thereof, and to each and all his assistants and deputies as well as to said United States Marshal, requiring him and them who have the custody and control of your petitioner, to bring and

have your petitioner before this court at a time required by law or by this court determined, together with the true cause of the detention of your petitioner to the end that due inquiry may be had in the premises, and that the court may make such further or different order in the premises to secure the production of your petitioner before this court as, under the circumstances, be deemed meet and proper.

Petitioner upon information and belief further shows that the said United States Marshal regards himself as disqualified from serving the said writ of habeas corpus, on the ground that he is a party to this cause or for other reasons; and your petitioner
266 therefore prays and moves that Thomas C. MacMillan, or such other disinterested person as the court may appoint, be authorized and directed to serve the said writ of habeas corpus herein.

THOMAS KELLY,
By MILLER, STARR, BROWN,
PACKARD & PECKHAM,
His Attorneys.

MILLER, STARR, BROWN,
PACKARD & PECKHAM,
Attorneys for said Petitioner.

267 STATE OF ILLINOIS,
County of Cook, ss:

W. A. T. Sweatman, being duly sworn, says that he is one of the counsel of the said Thomas Kelly, the above named petitioner, and is authorized to make this affidavit in his behalf, and that the foregoing petition to amend the petition of Thomas Kelly for habeas corpus heretofore filed herein, is true except as to those matters which are therein stated upon information and belief, and as to those matters he believes it to be true; and that he makes this affidavit on behalf of said Thomas Kelly for the reason that said Kelly is confined as stated in said foregoing petition and that it is impossible without considerable delay to get the said Kelly's affidavit thereto.

Subscribed and sworn to before me this — day of November, 1915.

Notary Public.

(Endorsed:) Filed Nov. 16, 1915. T. C. MacMillan, Clerk.

268 And on to-wit: the sixteenth day of November, 1915, in the record of proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, Judge of said Court, appears the following entry to-wit:

32288.

In the Matter of the Petition of THOMAS KELLY for Habeas Corpus
and Certiorari.

This cause now coming on to be heard upon the petition and motion this day filed of the petitioner, Thomas Kelly, counsel for petitioner and for the British Consul General at Chicago appearing,

It is ordered that said petition and motion be allowed and that the said writ of habeas corpus be directed to the said John J. Bradley, United States Marshal, and to each and all of his deputies, and to the said Elvin J. Griffin, Sheriff of said Lake County, and keeper of the jail thereof, and to each and all of his assistants and deputies, returnable in and before this court on the 19th day of November, 1915, at ten o'clock A. M. the order of November 15, 1915, herein entered, otherwise to stand as made.

Enter:

K. M. L.

269 And on to-wit: the sixteenth day of November, 1915, a Writ of Habeas Corpus, issued out of the clerk's office of said Court, directed to Elvin J. Griffin, Sheriff of Lake County, Illinois, and all of his assistants and deputies. Said Writ of Habeas Corpus, together with the return thereon endorsed is in words and figures following to-wit:

270 DISTRICT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

The United States of America to Elvin J. Griffin, Sheriff of Lake County, Illinois, and all of his Assistants and Deputies, Greeting:

You are hereby commanded to have the body of Thomas Kelly, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said Thomas Kelly shall be called or charged, before our Judges of our District Court of the United States, for the Northern District of Illinois, Seventh Judicial Circuit, now sitting in the Court Rooms of our said District Court, Federal Building, in the City of Chicago, in said District, on the 19th day of November, 1915, at ten o'clock A. M. to be dealt with according to law; and have you then and there this writ, with a return thereon of your doings in the premises.

To the Marshal of the Northern District of Illinois to execute.

Witness, the Hon. Kenesaw M. Landis, Judge of said Court, at Chicago, aforesaid, this 16th day of November in the year of our Lord one thousand nine hundred and fifteen and of our Independence the 140th.

[SEAL.]

T. C. MACMILLAN, *Clerk*,
By JOHN H. R. JAMAR, *Deputy Clerk*.

271 I have served this writ within my district in the following manner to-wit:

Upon the within named Elvin J. Griffin, Sheriff of Lake Co., Illinois, by reading the same to and within his presence and hearing and at the same time delivering him a copy thereof at Waukegan, Lake Co., Illinois, this 18th day of November A. D. 1915.

Chicago, Ill., Nov. 18th, 1915.

JOHN J. BRADLEY, *U. S. Marshal*,
By JOHN H. ANDERSON, *Deputy*.

One service	2.00
36 miles	2.16
	<hr/>
	\$4.16

(Endorsed on the back:) Gen. No. 32288. 12826. "By the Habeas Corpus Act." District Court of the United States, Northern District of Illinois, Eastern Division. Original in the Matter of the Petition of Thomas Kelly for a Writ of Habeas Corpus. Returnable Nov. 19, 1915. T. C. MacMillan, Clerk. John S. Miller, Atty. for Petitioner. Ent. E. C. C. Filed Nov. 23, 1915. T. C. MacMillan, Clerk.

272 And on to-wit: the eighteenth day of November, 1915, there was filed in the clerk's office of said court in said entitled cause a certain copy of a Writ of Certiorari which issued out of the Clerk's office on the fifteenth day of November, 1915, Said Copy of Writ of Certiorari, together with the affidavit of service thereon endorsed is in words and figures following to-wit:

273 The President of the United States to Lewis F. Mason, Esq., United States Commissioner for the Northern District of Illinois, and duly appointed and authorized by the District Court of the United States for the Northern District of Illinois, to act as Commissioner under the laws of the United States concerning the extradition of fugitives from the justice of a foreign country under a treaty between the United States and any foreign country, Greeting:

We being informed that there was lately pending before you a suit or complaint by or of Horace D. Nugent, His Britannic Majesty's Consul General at Chicago against Thomas Kelly, in proceedings for the extradition of said Thomas Kelly to the Dominion of Canada; and we being willing for sufficient reasons shown by the petition of the said Thomas Kelly, sworn to on the 12th day of November, 1915, that the proceedings concerning the matters described in, and those to which reference is made in, said petition should be certified and sent by the said Lewis F. Mason, Esq., United States Commissioner for the Northern District of Illinois, to the District Court of the United States for the Northern District of Illinois, you are hereby commanded to certify and send to the District Court

274 of the United States in and for the Northern District of Illinois, Eastern Division, on the 19th day of November, 1915, at 10:00 o'clock in the morning of that day, or as soon there-

after as counsel can be heard, your proceedings concerning the matters described in, and those to which reference is made in, said petition and concerning the application for the extradition of Thomas Kelly together with the testimony and other evidence offered and received before you with all things touching the same and the evidence, both oral and documentary, offered and received before you therein, as fully and as entirely as it remains before you, by whatever names the parties may be called in said proceedings, together with this writ, that said court may cause to be done what of right ought to be done in the premises.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, the 15th day of November, 1915.

[SEAL.]

T. C. MACMILLAN, *Clerk,*

By JOHN H. R. JAMAR,

*Deputy Clerk of the District Court of
the United States for the Northern
District of Illinois.*

The foregoing writ is allowed. Nov. 15, 1915.

K. M. LANDIS, *J.,*

*United States District Judge for the
Northern District of Illinois.*

Chicago, the 15th day of November, 1915.

275 STATE OF ILLINOIS,
County of Cook, ss:

Charles L. Cobb, being first duly sworn, deposes and says that he served the original writ, of which the foregoing is a true and exact copy, by delivering said original writ to Lewis F. Mason, United States Commissioner, at the same time informing him of the contents thereof, on the fifteenth day of November, A. D. 1915.

CHARLES L. COBB.

Subscribed and sworn to before me, this 18th day of November, A. D. 1915.

[SEAL.]

JOHN S. MILLER, JR.,

Notary Public.

(Endorsed:) Filed Nov. 18, 1915. T. C. MacMillan, Clerk.

276 And on to-wit: the nineteenth day of November, 1915, there was filed in the clerk's office of said court in said entitled cause a certain Copy of Writ of Habeas Corpus, directed to Elvin J. Griffin, Sheriff of Lake County, Illinois, and all of his assistants and deputies. Said Copy of Writ of Habeas Corpus, together with the return thereon endorsed is in words and figures following to-wit:

277 DISTRICT COURT OF THE UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division, ss:

The United States of America to Elvin J. Griffin, Sheriff of Lake County, Illinois, and all of his Assistants and Deputies, Greeting:

You are hereby commanded to have the body of Thomas Kelly by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention, by whatsoever name said Thomas Kelly, shall be called or charged, before our Judges of our District Court of the United States, for the Northern District of Illinois, Seventh Judicial Circuit, now sitting in the Court Rooms of our said District Court, Federal Building, in the City of Chicago, in said District, on the 19th day of November 1915, at ten o'clock A. M., to be dealt with according to law; and have you then and there this writ, with a return thereon of your doings in the premises.

To the Marshal of the Northern District of Illinois to execute.

Witness, the Hon. Kenesaw M. Landis, Judge of said Court, at Chicago, aforesaid, this 16th day of November, in the year of our Lord one thousand nine hundred and 15 and of our Independence of the 140th.

[SEAL.]

T. C. MACMILLAN, *Clerk*,
By JOHN H. R. JAMAR,
Deputy Clerk.

278 UNITED STATES OF AMERICA,
Northern District of Illinois,
Eastern Division, ss:

In the District Court Thereof.

THOMAS KELLY

vs.

JOHN J. BRADLEY, U. S. Marshal for the Northern District of Illinois, and ELVIN J. GRIFFIN, Keeper of the Jail at Lake County, Illinois.

To the Honorable Kenesaw M. Landis, Judge of the District Court of the United States for the Northern District of Illinois:

In obedience to the within writ directed to the undersigned we hereby produce the body of Thomas Kelly as within directed and returned, and that he is held in the custody of the undersigned pursuant to the Mittimus or Warrant of Commitment issued by Lewis F. Mason, United States Commissioner for the Northern District of Illinois, and a Commissioner duly authorized by the District Court of the United States for the Northern District of Illinois, to act as a Commissioner under the laws of the United States concerning the extradition of fugitives from justice of a Foreign Government under

treaty or convention between this and — Foreign Government, a copy of which is hereto annexed and made a part of this return.

JOHN J. BRADLEY,
*United States Marshall of the Northern
District of Illinois.*

ELVIN J. GRIFFIN,
Keeper of the Jail at Lake County, Illinois.

279 Before Lewis F. Mason, United States Commissioner for the Northern District of Illinois.

In the Matter of the Application for the Extradition of THOMAS KELLY, a Fugitive from Justice Under the Treaties between the United States and Great Britain.

UNITED STATES OF AMERICA,
Northern District of Illinois, Eastern Division:

The President of the United States of America to the Marshal of the Northern District of Illinois and to his Deputies, or to any or either of them, and to the Keeper of the County Jail of the County of Lake, at Waukegon, in the State of Illinois, Greeting:

Whereas, the above named Thomas Kelly has been arrested on the oath of Horace D. Nugent, His Britannic Majesty's Consul General at Chicago, Illinois, United States of America, for having on or about the 26th day of March, A. D. 1915, and at other times between the 1st day of May, 1913, and the 1st day of May, 1915, at Winnipeg in the Province of Manitoba, in the Dominion of Canada, in the domain of His Britannic Majesty, and within his jurisdiction, committed the crimes of

1. Perjury.
2. Obtaining money by false pretences.
3. Larceny or Embezzlement, and the obtaining of money, knowing the same to have been embezzled, stolen or fraudulently obtained.

280 That the said Thomas Kelly at Winnipeg, in the Province of Manitoba, in the Dominion of Canada, in the domain of His Britannic Majesty, did on or about the 26th day of March, A. D. 1915, unlawfully commit the crime of perjury by swearing in a judicial proceeding to-wit, before the Public Accounts Committee of the Legislative Assembly of the Province of Manitoba, in words to the effect that the proportions in which the ingredients were in the concrete in the caissons of the new parliament buildings at Winnipeg in Manitoba, constructed by Thomas Kelly and Sons, were one, two and four, or one and six, one of cement, two of sand and four of broken stone, and that the amount of cement was a little over a barrel and one-half in each cubic yard of concrete in said caissons, such assertion being then and there known to the said Thomas Kelly to be false, and being intended by him to mislead the Committee, contrary to the statute in such case provided.

That the said Thomas Kelly was also there guilty of the crime of obtaining money by false pretences; that between the 16th day of July, 1913, and the 1st day of January, A. D. 1915, at Winnipeg, aforesaid, in the Province of Manitoba, in the Dominion of Canada, in the domain of His Britannic Majesty, the said Thomas Kelly did unlawfully obtain for the firm of Thomas Kelly and Sons, from the provincial officers of the Province of Manitoba, having the care, custody, control and disbursing of public funds, with intent to defraud His Majesty the King in the right of the Province of Manitoba in the Dominion of Canada, the sum of to-wit, one million two hundred and fifty thousand dollars (\$1,250,000.00); that he obtained during the period aforesaid seven hundred seventy-nine thousand nine hundred and eighty-seven dollars (\$779,987.00) of the moneys of the King on account of pretended extra work done and materials furnished in the construction of caissons for
281 the new parliament buildings at Winnipeg, upon false and fraudulent representations and statements that Thomas Kelly and Sons had put in upwards of thirty-five thousand (35,000) cubic yards of reinforced concrete, used one million two hundred and thirteen thousand (1,213,000) feet of lumber, and seven hundred and ninety seven and five tenths (797-5/10ths) tons of iron rings and bolts, and that the fair and reasonable value for the concrete was twelve dollars (\$12.00) per cubic yard and for excavating seven dollars (\$7.00) per cubic yard, forty dollars (\$40.00) per thousand feet for the lumber, and one hundred and forty dollars (\$140.00) per ton for the iron rings and bolts, the said Thomas Kelly then and there well knowing the fact to be that he had not put in said caissons to exceed twenty-three thousand one hundred and fifteen (23,115) cubic yards of concrete, or used to exceed, to-wit: one hundred thousand (100,000) feet of lumber, or, to-wit: forty (40) tons of iron rings and bolts, and that the fair and reasonable cost and value of said extra work done and materials furnished, including a ten per cent (10%) profit to said contractors, did not then and there exceed ninety-nine thousand two hundred and ninety-two dollars and fifty cents (\$99,292.50); that said moneys, and other moneys, were so obtained by said false pretences and other false pretences with intent to defraud His Majesty the King in the right of the Province of Manitoba, contrary to the laws of the Province of Manitoba, in the Dominion of Canada in the Domain of His Britannic Majesty.

That said Thomas Kelly, between the 1st day of May, 1913, and the 1st day of May, 1915, at Winnipeg, was also guilty of the crime of larceny or embezzlement, and the obtaining of money, knowing the same to have been embezzled, stolen or fraudulently obtained,

and at the said place and times did steal and embezzle and
282 did also unlawfully receive valuable securities or other property belonging to His Majesty the King in the right of the Province of Manitoba which had theretofore been embezzled, stolen or fraudulently obtained by means of an unlawful and fraudulent conspiracy entered into between said Thomas Kelly, Sir Rodmond

P. Roblin, then and there Premier of the Province of Manitoba, Walter H. Montague, then and there Minister of Public Works, James H. Howden, then and there Attorney General, George R. Coldwell, then and there Acting Minister of Public Works and Minister of Education, R. M. Simpson, Victor W. Horwood, then and there Provincial Architect, and others, to defraud His Majesty the King in the right of the Province of Manitoba, out of large sums of money by means of false and fraudulent contracts for extras in the construction by the firm of Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, of the new parliament buildings at Winnipeg, Manitoba, and by false and fraudulent estimates and statements of the amount and quantity of labor and materials necessary to make the changes desired, and false and fraudulent and exorbitant values for the same, and that by means of such false and fraudulent scheme of fraud and deception, entered into, participated in and carried out by said parties, said Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, fraudulently and feloniously obtained of the moneys of the King the sum of, to wit: one million two hundred and fifty thousand dollars (\$1,250,000.00) in fraud of His Majesty the King in the right of the Province of Manitoba and contrary to the laws of the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty.

Said crimes of perjury, obtaining money by false pretences, larceny or embezzlement and the obtaining of money, knowing
 283 the same to have been embezzled, stolen or fraudulently obtained, being embraced in a treaty for the extradition of criminals between the Government of said Kingdom of Great Britain and Ireland, pertaining also to the Dominion of Canada, a part of His Britannic Majesty's domain, and the Government of the United States of America, concluded and signed at Washington, on the 9th day of August, 1842, the Supplemental Treaty concluded and signed July 12th, 1889, and Supplemental Treaty concluded and signed December 13th, 1900, and

Whereas, and examination of the charges against said Thomas Kelly has been had before me, Lewis F. Mason, a United States Commissioner for the Northern District of Illinois, specially authorized by order of the District Court to perform all the duties of a Commissioner under the extradition laws and treaties of the United States, and it appearing to me, the said Commissioner, that there are sufficient grounds to believe said Thomas Kelly guilty of the crimes charged, and is being hereby found and adjudged that said Thomas Kelly is guilty as charged, Now, Therefore, in the name and by the authority aforesaid,

These are to command you, the Marshal, as aforesaid, to commit the said Thomas Kelly to the custody of the Keeper of the Jail of said Lake County, Illinois, and to leave with the Keeper of said Jail a certified copy of this writ, and to command you, the Keeper of the said Jail, to receive and keep the said Thomas Kelly to abide the order of the Secretary of State of the United States.

284 . Witness my hand and seal this 11th day of November A. D.
1915.

LEWIS F. MASON,
*United States Commissioner for the Northern District
of Illinois, and a Commissioner Duly Authorized by
the District Court of the United States for the North-
ern District of Illinois, to act as a Commissioner
under the Laws of the United States Concerning the
Extradition of Fugitives from Justice of a Foreign
Government under Treaty or Convention between
This and — Foreign Government.*

285 (Endorsed on the back:) Copy. Gen. No. 32288. "By the
Habeas Corpus Act." District Court of the United States,
Northern District of Illinois, Eastern Division. In the matter of the
Petition of Thomas Kelly for a Writ of Habeas Corpus. Writ of
Habeas Corpus. Returnable Nov. 19, 1915, T. C. MacMillan, Clerk.
John S. Miller, Att'y for Petitioner. Filed Nov. 19, 1915. T. C.
MacMillan, Clerk.

286 And on to-wit: the nineteenth day of November, 1915, in the
record of proceedings thereof in said entitled cause before the
Hon. Kenesaw M. Landis, Judge of said Court, appears the following
entry to-wit:

32288.

In the Matter of the Petition of THOMAS KELLY for a Writ of Habeas
Corpus.

This day come John J. Bradley, United States Marshal, and Elvin
J. Griffin, Sheriff of Lake County, Illinois, and bring into open
court the petitioner, Thomas Kelly, and make due return to the writs
of Habeas Corpus issued in said cause showing the caption and de-
tention of said petitioner, and the court, after hearing evidence
adduced and arguments of counsel takes the matter under advise-
ment.

Upon motion of the petitioner by his attorney, it is ordered that
the petition, heretofore filed herein, stand as an answer.

It is further ordered by the court that said Thomas Kelly be, and
he is hereby remanded to the custody of the Sheriff of Lake County,
Illinois, to abide the further order of the Court.

287 And on to-wit: twenty-fourth day of November, 1915, in
the record of proceedings thereof in said entitled cause before
the Hon. Kenesaw M. Landis, Judge of said Court, appears the fol-
lowing entry to-wit:

Habeas Corpus. 32288.

THOMAS KELLY, Petitioner,
vs.

JOHN J. BRADLEY, Marshal of the United States for the Northern District of Illinois, and ELVIN J. GRIFFIN, Jailer of Lake County, Illinois, Respondents.

Comes on for hearing the issues joined upon the return of the respondents to the writ of habeas corpus heretofore issued herein under which the body of Thomas Kelly is produced here in open court, and the court after examining and considering the Petition of said petitioner for a writ of Habeas Corpus the return of the respondents to said writ of Habeas Corpus to which the said petition stands an answer and the record and proceedings brought up by writ of certiorari, and hearing the arguments of counsel for the respective contending parties, and being fully advised in the premises, finds that said petitioner is lawfully held in the custody of the respondents.

288 It is therefore ordered that the said writ of Habeas Corpus heretofore issued herein, be, and the same is discharged, and that the said petition of Thomas Kelly for writ of Habeas Corpus herein be, and it is hereby dismissed, and that said petitioner be, and he is hereby, remanded to the custody of said Elvin J. Griffin, Jailer of Lake County, Illinois.

To which finding and rulings and order the said petitioner by his counsel, here now duly excepts.

And thereupon, on motion of petitioner, it is ordered by the Court that the petitioner be given ten days in which to petition for and take an appeal to the Supreme Court of the United States, during which time no surrender shall be made by respondents of the custody of the petitioner, except upon the order of this Court.

KENESAW M. LANDIS.

289 And on to-wit: the twenty-seventh day of November 1915, came the petitioner in said entitled cause by his attorneys and filed in the clerk's office of said Court his certain Petition for Appeal in words and figures following to-wit:

290

Petition for Appeal.

In the District Court of the United States for the Northern District
of Illinois, Eastern Division.

Before Honorable Kenesaw M. Landis, Judge.

No. 32288.

In the Matter of the Petition of THOMAS KELLY for the Writs of
Habeas Corpus and Certiorari.

THOMAS KELLY, Petitioner,

vs.

ELVIN J. GRIFFIN, Jailer, etc., and JOHN J. BRADLEY, United States
Marshal, &c.

Petition for Appeal.

To the Honorable Kenesaw M. Landis, Judge of the District Court
for the Northern District of Illinois:

The above named petitioner, Thomas Kelly, feeling himself aggrieved by the order and judgment of this court made and entered on the 24th day of November, A. D. 1915, wherein and whereby it was ordered and adjudged that the writ of habeas corpus hereinbefore granted and issued herein be discharged and that his petition be dismissed, and that your petitioner be remanded to the custody of the Jailer of Lake County, Illinois, from which he was taken by the said writ of habeas corpus, doth hereby appeal from said order and judgment to the Supreme Court of the United States; and he prays that this his petition for appeal may be allowed, and that a transcript of the record, proceedings and papers upon which said order and judgment was made and entered, duly authenticated, may be sent to the Supreme Court of the United States. And petitioner files herewith his assignment of errors.

Dated November 26, 1915.

MILLER, STARR, BROWN,
PACKARD & PECKHAM,

Attorneys for said petitioner, Thomas Kelly.

JOHN S. MILLER, &
EDWARD O. BROWN,

Of Counsel.

(Endorsed:) Filed Nov. 27, 1915. T. C. MacMillan, Clerk.

291 And on the same day to-wit: the twenty-seventh day of
November, 1915, came the petitioner in said entitled cause by
his attorneys and filed in the clerk's office of said court, his certain
assignment of errors in words and figures following to-wit:

Assignment of Errors.

In the Supreme Court of the United States.

THOMAS KELLY, Appellant,
vs.

ELVIN J. GRIFFIN, Sheriff and Jailer of Lake County, Illinois, and
John J. Bradley, United States Marshal for the Northern District
of Illinois, Appellees.

Assignment of Errors.

The said Appellant, Thomas Kelly, by John S. Miller and Edward O. Brown, his attorneys, says that in the aforesaid proceedings of the District Court of the United States for the Northern District of Illinois, Eastern Division, and in the said order and judgment of the said last mentioned court, made and entered therein on the 24th day of November, 1915, manifest error hath intervened as follows:

1. The said District Court erred in finding that the said Thomas Kelly was lawfully detained and deprived of his liberty by the said Jailer of Lake County, Illinois, or by the said United States Marshal; and in not finding and holding that he, the said Appellant was unlawfully so held and detained and deprived of his liberty.

2. The said District Court erred in discharging said writ of habeas corpus, and in dismissing the said petition of the Appellant and in remanding him to the custody of the Jailer of Lake County, Illinois.

3. The said District Court erred in refusing to discharge him, the said Thomas Kelly, from such arrest and detention, on the hearing of said writs of habeas corpus and certiorari, and in not thereon discharging him from such arrest and detention.

293 4. The said District Court erred in holding that the said United States Commissioner, in the said proceedings before him, had jurisdiction of the person of this Appellant; and in not holding that the said United States Commissioner was without jurisdiction of the person of this appellant in said proceedings.

5. The said District Court erred in holding that the said United States Commissioner had jurisdiction of the subject matter in the said proceedings before him; and in not holding that the said Commissioner was without jurisdiction of such subject matter.

6. The District Court erred in not holding that the crime of perjury, with the commission of which in the Province of Manitoba in the Dominion of Canada, this Appellant was charged before said United States Commissioner, is not the crime of perjury denounced by the laws of Illinois or by the laws of the United States, and in not holding that the same is not a crime in Illinois or in the United States, and is not the crime of perjury mentioned in the treaty or convention of 1889 between the United States and the Kingdom of Great Britain and Ireland, and is not one of the crimes or offenses specified in any extradition treaty or convention between the United

States and Great Britain, and in not holding that the same is not an extraditable crime or offense.

7. The District Court erred in not holding that the supposed crime of unlawfully receiving money, valuable securities and other property, knowing the same to have been embezzled, stolen or fraudulently obtained, with the commission of which in the said Province of Manitoba this Appellant was charged before said United States Commissioner is not a crime in the State of Illinois or under the laws of the United States; and in not holding that this Appellant was not extraditable for said supposed crime or offense.

8. The District Court erred in not holding that the competent evidence before the said United States Commissioner did not
294 prove or show that the Committee on Public Accounts of the Legislative Assembly of Manitoba, (in testifying or making statements before which Committee, it was charged before the said United States Commissioner that this Appellant committed perjury in said Province of Manitoba,) had any power to administer an oath to said Thomas Kelly as a witness before such Committee, or that the Chairman or any member of said Committee had any such power to administer an oath.

9. The District Court erred in holding that the competent evidence before the said United States Commissioner tended to prove or show that the said Appellant committed perjury in the said Province of Manitoba, as charged in the said complaint before said Commissioner.

10. The District Court erred in holding that the competent evidence before the said United States Commissioner tended to show that the said Appellant committed the crime of obtaining money by false pretences, as charged against him.

11. The District Court erred in holding that the competent evidence before the said United States Commissioner tended to show that the said Appellant committed the crime of stealing or theft, or embezzlement, or obtaining money, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained.

12. The District Court erred in not holding that the pretended agreement of obtaining money by false pretences under the laws of the said Dominion of Canada and Province of Manitoba, with the commission of which the Appellant was charged before said United States Commissioner is not a crime by or under the laws of the State of Illinois.

13. The District Court erred in not holding that the pretended agreement of obtaining money by false pretences under the
295 laws of the said Dominion of Canada and Province of Manitoba, with the commission of which the Appellant was charged before said United States Commissioner is not a crime by or under the laws of the United States of America.

14. The District Court erred in not holding that the pretended agreement of obtaining money by false pretences under the laws of the said Dominion of Canada and Province of Manitoba, with the commission of which the Appellant was charged before said United States Commissioner is not the crime of obtaining money, valuable

securities or other property by false pretences which is referred to in the treaty or convention in that behalf between the United States and Great Britain.

15. The District Court erred in not holding that the said pretended offences charged against the said Appellant before the said United States Commissioner are not made criminal by the laws of both countries within the provisions and meaning and contemplation of treaties in that behalf between the United States and Great Britain.

16. As to each of said charges of the commission of crime the Appellant says that the District Court erred in not holding that the offences so charged is not made criminal by the laws of both countries within the meaning of said treaties.

17. As to each of said charges of crime against the said Appellant, and as to each of the said alleged offences severally, with the commission of which the Appellant was charged before the said United States Commissioner, the Appellant says that the District Court erred in not holding that there was not such evidence of criminality before the said Commissioner as, according to the laws of the place where the said respondent, Thomas Kelly, was confined, to-wit: the State of Illinois, would justify his apprehension and commitment for trial of such pretended crime or offence, had such pretended crime or offence been there committed.

296 18. The District Court erred in not holding that the pretended copies of certificates, warrants, depositions, exhibits, legislative proceedings and acts, and other papers, presented to the said Commissioner and there offered in evidence against the Appellant, respectively, are not proper and legally authenticated so as to entitle them respectively, to be received in evidence before the said Commissioner in support of such application for extradition.

19. The District Court erred in not holding that the pretended copies of certificates, warrants, depositions, exhibits, legislative proceedings and acts, and other papers, presented to the said Commissioner and there offered in evidence against the Appellant, respectively, are not proper and legally authenticated so as to entitle them respectively to be received for similar purposes by the tribunals of the said Province of Manitoba or of the Dominion of Canada.

20. The District Court erred in not holding that the pretended copies of certificates, warrants, depositions, exhibits, legislative proceedings and acts, and other papers, presented to the said Commissioner and there offered in evidence against the Appellant, respectively, or the papers or documents of which they purport to be copies are not admissible and would not be admitted or received in evidence for similar purposes, or for the purposes of showing criminality of the Appellant by the tribunals of Canada.

JOHN S. MILLER &
EDWARD O. BROWN,
Attorneys for Appellant.

(Endorsed:) Filed Nov. 27, 1915. T. C. MacMillan, Clerk.

297 And on the same day to-wit: the twenty-seventh day of November, 1915, in the record and proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, Judge of said Court, appears the following entry to-wit:

32288.

In the Matter of the Petition of THOMAS KELLY for the Writs of Habeas Corpus and Certiorari.

THOMAS KELLY, Petitioner,

vs.

ELVIN J. GRIFFIN, Jailer, Etc., and JOHN J. BRADLEY, United States Marshal, &c.

Upon reading and filing the petition of said Thomas Kelly for an appeal from the order and judgment made and entered herein on the 24th day of November, 1915, to the Supreme Court of the United States, it is ordered that the same be and the same is hereby allowed and that his said appeal herein to the Supreme Court of the United States from said order and judgment be and the same is allowed, and that a certified copy of the record and proceedings herein be forthwith transmitted to the Supreme Court of the United States according to the course and practice in such cases, and that the bond on such appeal be fixed at the sum of five hundred dollars with surety to be approved by this court.

298 And on to-wit: the thirteenth day of December, 1915, in the record and proceedings thereof in said entitled cause before the Hon. Kenesaw M. Landis, Judge of said Court, appears the following entry to-wit:

No. 32288.

In the Matter of the Petition of THOMAS KELLY for the Writs of Habeas Corpus and Certiorari.

THOMAS KELLY, Appellant,

vs.

ELVIN J. GRIFFIN, Jailer of Lake County, Illinois, Appellee.

In the Matter of the Appeal to the Supreme Court of the United States.

The said Petitioner and Appellant, Thomas Kelly, here now presenting his appeal bond for the approval of the court, the parties appearing by their respective counsel and having been heard, John S. Miller, Pierce Butler, Charles L. Cobb, appearing for said Thomas Kelly and Almon W. Bulkley and Claire E. More, appearing for said Elvin J. Griffin, Jailer, and for the said British Consul General at Chicago, it is ordered that pending the said appeal, the said Thomas Kelly shall be detained in the custody of the Jailer of Lake

County, Illinois, to answer the judgment of the Supreme Court on said appeal, unless and until otherwise ordered, by the Supreme Court or the District Court of the United States for said District; and that the appeal bond of the said Thomas Kelly be and the same is hereby approved.

KENESAW M. LANDIS.

299 And on the same day to-wit: the thirteenth day of December, 1915, there was filed in the clerk's office of said Court a certain Appeal Bond in words and figures following to-wit:

300

Appeal Bond.

Know all men by these presents, that we, Thomas Kelly, as Principal, and John W. Rainey, as Surety, are held and firmly bound unto the United States of America in the full and just sum of Five Hundred Dollars (\$500.) to be paid to the said United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 30th day of November, 1915.

Whereas, lately at the October Term, A. D. 1915, of the District Court of the United States for the Northern District of Illinois in a proceeding pending in said court, in which the said Thomas Kelly was petitioner, for the issue of the writs of habeas corpus and certiorari and Elvin J. Griffin, Jailer of Lake County, Illinois, was respondent, an order and judgment was entered that the writ of habeas corpus theretofore issued therein be discharged and the said petition of the said Thomas Kelly therefore be dismissed and that the said Thomas Kelly be committed to the custody of the said respondent, Elvin J. Griffin, Jailer of Lake County, Illinois, from which order and judgment the said Thomas Kelly prayed and was allowed and has taken an appeal to the Supreme Court of the United States, the citation directed to the said Elvin J. Griffin, Jailer of Lake County, Illinois, citing and admonishing him to. — and appear in the Supreme Court of the United States on the Twenty-ninth day of December, 1915, was issued and duly served upon the said appellee, Elvin J. Griffin, Jailer as aforesaid;

Now, the condition of the above obligation is such that if the said appellant, Thomas Kelly, shall appear in the Supreme Court of the United States and shall prosecute his said appeal with effect,
 301 shall answer all costs if he fails to make his appeal good, then this obligation shall be void, otherwise the same shall remain in full force and effect.

THOS. KELLY. [SEAL.]
 JOHN W. RAINEY. [SEAL.]
 — — — [SEAL.]

O. K.
 A. W. B.
 K. M. LANDIS.

(Endorsed:) Filed Dec. 13, 1915. T. C. MacMillan, Clerk.

302

Præcipe for Record on Appeal.

UNITED STATES OF AMERICA,

Northern District of Illinois, Eastern Division, ss:

In the District Court of the United States for said District and
Division.

No. 32288.

In the Matter of the Petition of THOMAS KELLY for the Writ of
Habeas Corpus and Certiorari.

In the Matter of the Appeal of Said Thomas Kelly to the Supreme
Court of the United States.

Præcipe.

To Thomas C. MacMillan, Clerk of the District Court, aforesaid:

Please prepare a transcript of the record in the above entitled
cause for use in the Supreme Court of the United States upon said
appeal from the District Court of the United States in and for the
Northern District of Illinois, Eastern Division, and incorporate in
said transcript the following:

(1) Petition of said Thomas Kelly for writs of Habeas Corpus
and Certiorari with exhibits attached thereto, filed November 13th,
1915.

(2) Order entered thereon November 15th, 1915, directing the
writ of Habeas Corpus and Certiorari to issue.

(3) Writs of Habeas Corpus and Certiorari issued November 15th,
1915, and returns of United States Marshal and Sheriff of Lake
County, Illinois, and of United States Commissioner Mason.

(4) Supplemental Petition filed November 16th, 1915.

(5) Order entered November 16th, 1915, directing writ of Ha-
beas Corpus to issue to Sheriff of Lake County, Illinois, and to United
States Marshal.

303 (6) Order entered November 19th, 1915, that petition
stand as answer; hearing case, taking case under advisement
and remanding petitioner to Sheriff of Lake County, Illinois.

(7) Order entered November 24th, 1915, discharging writ of
Habeas Corpus and dismissing petition and remanding petitioner to
custody of Jailer of Lake County, Illinois, etc.

(8) Petition for appeal to Supreme Court of the United States
filed November 27th, 1915, and assignment of errors.

(9) Order allowing appeal to Supreme Court of the United States
and fixing appeal bond.

(10) Citation, issued November 27th, 1915.

(11) Order of December 13th, 1915, relating to custody of peti-
tioner pending appeal and approving appeal bond.

(12) Any other order (if any) entered in said cause or proceeding.

(13) Appeal Bond, filed December 13th, 1915.

JOHN S. MILLER,
EDWARD OSGOOD BROWN,
PIERCE BUTLER &
CHARLES L. COBB,

Attorneys for Petitioner, Thomas Kelly.

Received a copy of the foregoing præcipe for record this 18th day of December, 1915.

ALMON W. BULKLEY,
CLAIRE E. MORE &
C. PAUL TALLMADGE,
BULKLEY, MORE & TALLMADGE,

*Attorneys for Elvin J. Griffin, Sheriff & Jailer, &c.,
and for British Consul General.*

(Endorsed:) Filed Dec. 18, 1915. T. C. MacMillan, Clerk.

304 NORTHERN DISTRICT OF ILLINOIS,
Eastern Division, ss:

I, T. C. MacMillan, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said Court, made in accordance with Præcipe filed in the cause entitled Thomas Kelly, Petitioner, vs. John J. Bradley, Marshal of the United States for the Northern District of Illinois, and Elvin J. Griffin, Jailer of Lake County, Illinois, Respondents, as the same appear from the original records and files thereof, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office, in the City of Chicago, in said District, this twenty-second day of December, 1915.

[Seal of District Court U. S., Northern Dist Illinois. 1855.]

T. C. MACMILLAN, *Clerk.*

By JOHN H. R. JAMAR,
Deputy Clerk.

305 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Elvin J. Griffin, Jailer of Lake County, Illinois:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the 29th day of December, A. D. 1915, pursuant to an appeal filed in the Clerk's office of the District Court of the United States for the Northern District of Illinois, and allowed, wherein Thomas Kelly is appellant and Elvin J. Griffin,

Jailer of Lake County, Illinois, is respondent and appellee, to show cause, if any there be, why the order and judgment of the said District Court of the United States for the Northern District of Illinois, entered on the 19th day of November, 1915, in the matter of the Petition of the said Thomas Kelly for the writs of habeas corpus and certiorari and which is in the said petition for appeal and order allowing the same mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 27th day of November, A. D. 1915.

KENESAW M. LANDIS,

District Judge.

Due service of above citation by copy this 27th day of November, 1915, is admitted.

ALMON W. BULKLEY,

CLAIRE E. MORE,

Attorneys for Said Appellee, Elvin J. Griffin.

(Endorsed:) 32288. Petition of Kelly for, etc. Citation. Filed Nov. 27, 1915, at — o'clock — M. J. C. MacMillian, Clerk.

Endorsed on cover: File No. 25,060. N. Illinois, D. C. U. S. Term No. 777. Thomas Kelly, appellant, vs. Elvin J. Griffin, Jailer of Lake County, Illinois. Filed December 24th, 1915. File No. 25,060.



Office Supreme Court, U. S.

FILED

JAN 22 1916

JAMES D. MAHER

CLERK

6
NO. 777

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1915.

THOMAS KELLY,

Appellant.

VS.

ELVIN J. GRIFFEN, Jailer of Lake County, Illinois,

Appellee.

Appeal from the District Court of United States for the Northern District
of Illinois from an Order Discharging a Writ of Habeas Corpus
Dismissing Petition and Remanding Appellant.

MOTION AND SUGGESTIONS.

HENRY B. F. MACFARLAND,

ALMON W. BULKLEY,

C. E. MORE,

*Attorneys for Appellee, and
for the Province of Manitoba.*



IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1915.

THOMAS KELLY,
Appellant.

vs.

ELVIN J. GRIFFEN, Jailer of Lake County, Illinois,
Appellee.

Appeal from the District Court of United States for the Northern District
of Illinois from an Order Discharging a Writ of Habeas Corpus
Dismissing Petition and Remanding Appellant.

MOTION AND SUGGESTIONS.

MOTION.

Now comes the appellee, by Almon W. Bulkley,
C. E. More and Henry B. F. Macfarland, his at-
torneys, acting also in this behalf for the Provin-
cial Government of Manitoba, in the Dominion of
Canada, and moves to advance this cause upon the
docket and to hear said cause at a date as early
as the convenience of the court will permit.

SUGGESTIONS FOR ADVANCEMENT.

Early in October, 1915, the appellant was arrested in Chicago, Illinois, on a fugitive warrant issued by a United States commissioner upon a complaint filed by Horace D. Nugent, His Britannic Majesty's Consul General at Chicago, charging appellant with three separate crimes, each extraditable under the treaties between the United States and Great Britain. The crimes for which the appellant was apprehended on said fugitive warrant were:

- (1) Perjury. (Treaty, 1889, Art. 1, Par. 5.)
- (2) Obtaining money by false pretenses (Supp. Treaty, 1900, Art. 1, Par. 11).
- (3) Larceny; embezzlement; the obtaining of money knowing the same to have been embezzled, stolen, or fraudulently obtained (Treaty, 1889, Art. 1, Par. 3).

The crimes contained in this last clause are called "THEFT" under the Canadian Criminal Code.

Three separate warrants were issued by Hugh J. McDonald, a police magistrate in and for the Province of Manitoba, and the City of Winnipeg, Manitoba, for the crimes charged.

The warrant for perjury and the warrant for obtaining money under false pretenses were issued on August 28, 1915, and the warrant for larceny, or embezzlement, etc., on October 12, 1915. At the times of the issuing of the warrants, and at all times since, Thomas Kelly has been in the United

States, and is resisting extradition. Thomas Kelly is a resident and citizen of Winnipeg, Manitoba.

1. PERJURY.

(a) The warrant for perjury which was issued on the 28th day of August, 1915, was upon an information and complaint filed before the said Hugh J. McDonald, police magistrate at Winnipeg, by one E. J. Elliott, in which it is charged, "that on or about the 26th day of March, 1915, at Winnipeg, aforesaid, Thomas Kelly of Winnipeg, did unlawfully commit perjury by falsely swearing in a judicial proceeding, to-wit: before the public accounts committee of the legislative assembly of the Province of Manitoba, in words to the effect that the proportions in which the ingredients were in the concrete in the caissons of the new parliament buildings at Winnipeg, in Manitoba, constructed by Thomas Kelly & Sons, were: One, two and four; or one and six; one of cement, two of sand and four of broken stone, and that the amount of cement was a little over a barrel and a half, in each cubic yard of concrete in said caissons. Such assertion being then known to said Thomas Kelly to be false and being intended by him to mislead the said committee."

(b) It appears that Thomas Kelly & Sons had a contract for the building of the new parliament building at Winnipeg, Manitoba. The contract under which he was to build the caissons called for one part Portland cement, two parts of sand and four parts of crushed stone. No crushed stone was used, but pit gravel was used in place of stone and sand. The amount of cement stated was not used.

Thomas Kelly knew the statements made under oath before the public accounts committee that "one part Portland cement, two parts sand and four parts broken stone were used," were false and were made by him for the purpose of misleading the committee, and that they were material in the hearing before the committee.

2. FALSE PRETENSES.

(a) A warrant was also issued by Hugh J. McDonald, as such police magistrate of Winnipeg, on or about the 28th day of August, 1915, for the arrest of said Thomas Kelly, upon an information and complaint filed with the said Hugh J. McDonald, as police magistrate, by one E. J. Elliott, in which it is charged by the said E. J. Elliott, "that he has reason to believe, and does believe, that said Thomas Kelly, of Winnipeg, Manitoba, contractor, between the 16th day of July, 1913, and the 21st day of January, 1915, at Winnipeg, aforesaid, did unlawfully, with intent to defraud, obtain by false pretenses from his Majesty, the King in the right of the Province of Manitoba, the sum of about \$1,250,000 for himself and others, doing business under the name of said Thomas Kelly & Sons, contrary to the form of the statute made and provided."

(b) Thomas Kelly & Sons, on July 16, 1913, were awarded the contract by the Provincial Government of Manitoba, for the erection of the new parliament building, upon Thomas Kelly & Sons' bid of \$2,859,750 for the completion of the building and as a result of that relation, were enabled to and did present false and fraudulent estimates and claims for

extra work upon which the said Thomas Kelly did unlawfully obtain for the firm of Thomas Kelly & Sons, from the provincial officers of the Province of Manitoba, having the care, custody, control and disbursing of public funds with intent to defraud His Majesty the King in the right of the Province of Manitoba in the Dominion of Canada, the sum of, to wit, one million two hundred and fifty thousand dollars (\$1,250,000); that he obtained during the period aforesaid seven hundred seventy-nine thousand nine hundred and eighty-seven dollars (\$779,987) of the moneys of the King on account of same pretended extra work done, and materials furnished in construction of the caissons alone for said buildings, upon false and fraudulent representations and statements that Thomas Kelly and Sons had put in upwards of thirty-five thousand (35,000) cubic yards of reinforced concrete, used one million two hundred and thirteen thousand (1,213,000) feet of lumber, and seven hundred and ninety-seven and five-tenths (797-5/10ths) tons of iron rings and bolts, and that the fair and reasonable value for the concrete was twelve dollars (\$12) per cubic yard and for excavating seven dollars (\$7) per cubic yard, forty dollars (\$40) per thousand feet for the lumber, and one hundred and forty dollars (\$140) per ton for the iron rings and bolts, the said Thomas Kelly then and there well knowing the fact to be that he had not put in said caissons to exceed twenty-three thousand one hundred and fifteen (23,115) cubic yards of concrete, or used to exceed, to wit, one hundred thousand (100,000) feet of lumber, or, to wit, forty (40) tons of iron rings and bolts, and that the fair and

reasonable cost and value of said extra work done and materials furnished, including a ten per cent (10%) profit to said contractors, did not then and there exceed ninety-nine thousand two hundred and ninety-two dollars and fifty cents (\$99,292.50); that said moneys, and other moneys, were so obtained by said false pretenses and other false pretenses, with intent to defraud His Majesty the King in the right of the Province of Manitoba, contrary to the laws of the Province of Manitoba in the Dominion of Canada in the dominion of his Britannic Majesty.

3. THEFT (Larceny, etc., Par. 3, Article 1, Treaty 1889).

(a) On or about the 12th day of October, 1915, a warrant was issued by Hugh J. McDonald, police magistrate of Winnipeg, for the arrest of Thomas Kelly, on a complaint filed by E. J. Elliott, in which it is charged by said Elliott, "that Thomas Kelly of the City of Winnipeg, contractor, between the first day of May, 1913, and the 12th day of May, 1915, at Winnipeg, aforesaid, unlawfully stole money, valuable securities, or other property, belonging to His Majesty the King, in the right of the Province of Manitoba, and at the said place and times, also unlawfully received money, valuable securities, or other property, belonging to His Majesty the King, in the right of the Province of Manitoba, which had been embezzled, stolen or fraudulently obtained by means of an unlawful conspiracy by fraudulent means between the said Thomas Kelly aforesaid, Sir Rodmond P. Roblin, Walter H. Montague, James H. Howden, George R. Coldwell, R. M. Simpson and Victor W. Horwood, and others, to the informant

unknown, to defraud His Majesty the King, in the right of the Province of Manitoba, the said Kelly then and there well knowing that said moneys, valuable securities, or other property had theretofore been embezzled, stolen, or fraudulently obtained by means of said unlawful conspiracy.”

(b) That said Sir Rodmond P. Roblin was then and there premier of the Province of Manitoba; Walter H. Montague, then and there minister of public works; James H. Howden, then and there attorney general; George R. Coldwell, then and there acting minister of public works; and minister of education, R. M. Simpson; Victor W. Horwood, then and there provincial architect. That by means of said unlawful conspiracy participated in by said parties and others they were enabled to and did defraud His Majesty the King in the right of the Province of Manitoba out of large sums of money by means of false and fraudulent contracts for extras in the construction by the firm of Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, of the new parliament buildings at Winnipeg, Manitoba, and by false and fraudulent estimates and statements of the amount and quantity of labor and materials necessary to make the changes desired, and false and fraudulent and exorbitant values for the same, and that by means of such false and fraudulent scheme of fraud and deception, entered into, participated in and carried out by said parties, said Thomas Kelly and sons, of which firm the said Thomas Kelly was a member, fraudulently and feloniously obtained of the moneys of the King the sum of, to wit, one million two hundred and fifty thousand dollars (\$1,250,000)

in fraud of His Majesty the King in the right of the Province of Manitoba and contrary to the laws of the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty.

4. Upon a hearing upon the fugitive warrant before the United States commissioner, copies of the complaints, warrants, testimony, depositions and evidence, duly certified and authenticated, were submitted on behalf of the Dominion government, and the commissioner found the facts against Mr. Kelly and recommended to the secretary of state that a warrant of extradition issue, and committed Thomas Kelly to the custody of the keeper of the jail of Lake county, Illinois, to abide the order of the secretary of the United States. The secretary of state has issued his warrant of extradition.

5. In our treaty obligations with Great Britain, as contained in Article X of the Treaty of 1842, and the Supplemental Treaties of 1889 and 1900, respectively, the United States is in duty bound to surrender up with reasonable promptness and dispatch, fugitives from justice from Great Britain or colonies. To this end, congress has provided the Habeas Corpus Act, which contemplates by its provisions a speedy disposition of this class of cases. Section 759 of the statute of the United States provides that:

“When a writ (of *Habeas corpus*) is returned, the date shall be set for the hearing of the same not exceeding five days thereafter, unless the party petitioning requests a longer time.”

Section 761 provides that:

“The court, or justice, or judge shall proceed *in a summary way* to determine the facts of the

case by hearing the testimony and arguments, and thereupon to dispose of the party as law and justice require."

For the purposes of this motion it would seem only necessary to call attention to the proceedings outlined above, and that Thomas Kelly is resisting extradition and is thereby delaying the enforcement of the criminal laws in the Province of Manitoba of the Dominion of Canada.

By reason of the great importance of the matters involved in this case, to the people of Canada and the Province of Manitoba, we respectfully submit that the issues of this case be determined at as early a date as the convenience of the court will permit.

Respectfully submitted,

Henry B. Macfarland
.....
Evans Bldg., Washington, D. C.

Allyn M. Buckley
Edmore
.....
518 Home Insurance Bldg., Chicago, Ill.
Attorneys for Appellee,
and the Province of Manitoba.

SUPREME COURT OF THE UNITED STATES.

October Term, 1915.

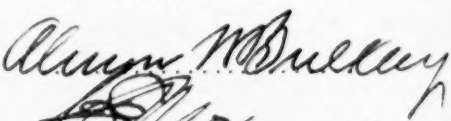

Thomas Kelly,	}
<i>Appellant,</i>	
<i>vs.</i>	
Elvin J. Griffin,	
Jailer of Lake County, Illinois,	}
<i>Appellee.</i>	

To John S. Miller and Edward Osgood Brown, 1522
First National Bank Bldg., Chicago, Ill., and
Pierce Butler, Merchants Natl. Bank Bldg., St.
Paul, Minn., attorneys for appellant.

Sirs:

Please take notice that on Monday, the 24th day
of January, 1916, we will apply to the said court
by motion to advance said cause upon the docket,
and to hear it at a day as early as the convenience
of the court will permit. You are herewith served
with a copy of said motion.

Dated this 20th day of January, 1916.

.....



 Attorneys for Appellee and the
 Province of Manitoba.

STATE OF ILLINOIS,)
COUNTY OF COOK.) ss.

Welfred M. Doherty, being first duly sworn, say that he is an assistant in the employ of Alvin W. Bulkley and C. E. More, and deposes and says that he caused copies of the foregoing motion and notice to be served upon the attorneys of the appellant by leaving two copies each for John S. Miller and Edgar Osgood Brown, at their office, 1522 First National Bank building, Chicago, Illinois, and by depositing two copies thereof in the United States Postoffice, Chicago, Illinois, enclosed in a sealed envelope with postage fully prepaid thereon and addressed to Pierce Butler, attorney-at-law, Merchants Natl. Bank building, St. Paul, Minnesota, that being his proper postoffice address, on the 20th day of January, 1916.

Welfred M. Doherty
Subscribed and sworn to before me this 20th day of January, 1916.

Neil Jackson
Notary Public, Cook County, Illinois.

Office Supreme Court, U. S.

FILED

JAN 24 1916

JAMES D. MAHER

CLERK

IN THE

Supreme Court of the United States

October Term, A. D. 1915.

No. 777

THOMAS KELLY,

Appellant.

vs.

ELVIN J. GRIFFEN, Jailer, etc.,

Appellee.

**OBJECTIONS OF APPELLANT TO MOTION OF APPELLEE
TO ADVANCE.**

JOHN S. MILLER,

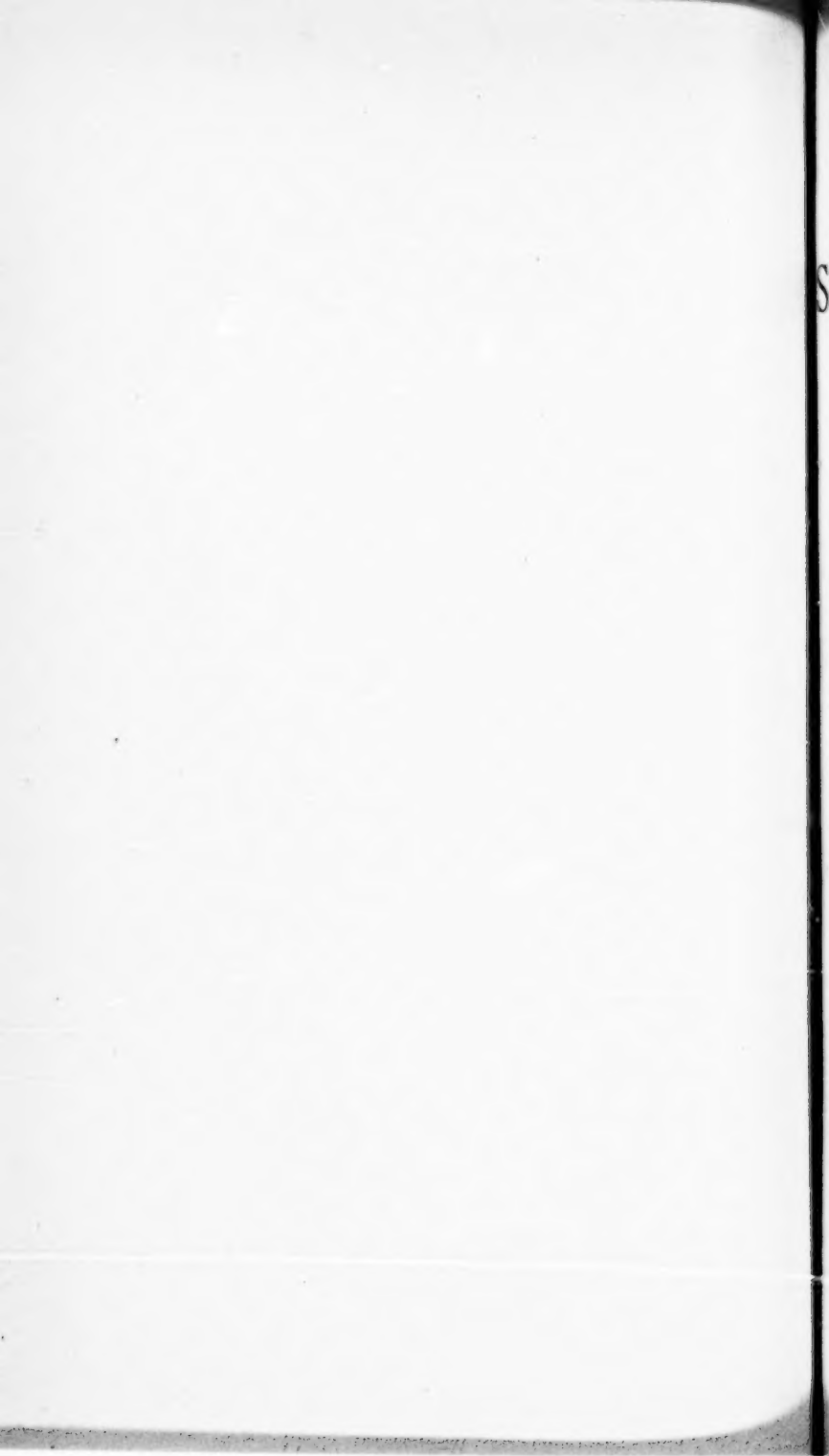
EDWARD OSGOOD BROWN,

Chicago, Ill.,

PIERCE BUTLER,

St. Paul, Minn.,

Counsel for Appellant.



IN THE
Supreme Court of the United States

October Term, A. D. 1915.

No. 777

THOMAS KELLY,

Appellant.

vs.

ELVIN J. GRIFFIN, Jailer, etc.,

Appellee.

OBJECTIONS OF APPELLANT TO MOTION OF AP-
PELLEE TO ADVANCE.

1. The motion (pp. 8, 9) seems to be based upon two grounds:

(a) That Section 759 of the Revised Statutes of the United States provide that the hearing of *habeas corpus* application shall be set not exceeding five days after the return of the writ, *unless party petitioning requests a longer time.*

This provision for prompt hearing is thus for the benefit of the petitioner. Obviously this is also true of the provision of Section 761 requiring the hearing to proceed "in a summary way."

(b) That appellant by resisting extradition (in the exercise of his lawful rights) is "delaying the enforcement of the criminal laws in the Province of Manitoba of the Dominion of Canada"; and that "by reason of the great importance of the matters involved in this case to the People of Canada and the Province of Manitoba" the application for an early date of hearing is pressed by appellee.

This case is an appeal from the judgment of the District Court discharging a writ of *habeas corpus* which had been issued by that court upon appellant's petition, and dismissing his petition. The writ was sued out to procure his discharge from custody under warrant of the United States Commissioner committing him to the jail of Lake County, Illinois, to await his extradition. Appellant is now held in the custody of appellee pending this appeal under an order of the District made in pursuance of paragraph 2 of Rule 34 of this court.

The appellant is advised by counsel that he has good grounds for contending for the reversal of the judgment of the District Court and for his discharge from such custody.

2. It is submitted that this application of appellee to advance comes under Paragraph Seven of Rule 26 of this court, and that no special or peculiar circumstances are shown to the court by the appellee.

3. It is, however, further submitted that this case is not one in which the United States are concerned and that it does not involve or affect any matter of general public interest, and is not entitled to precedence under the provisions of any act of Congress.

4. The record in this case was filed and the case dock-

eted herein on December 24, 1915, during the present term. The record of the case has not yet been printed.

5. To explain his motive in opposing this motion to advance, appellant shows:

That he is advised that the criminal charges against him, on which his extradition is sought, come in the midst and as the result of a violent political storm and upheaval in Manitoba, in which public feeling is so aroused and prejudice is so violent and dominating that a fair trial of the criminal charges against him at this time, or before such condition subsides, cannot be looked for. To some but not to its full extent this state of affairs is shown or indicated in the *ex parte* affidavits or depositions and showing which were presented before the United States Commissioner in support of his extradition, and which are contained in the record in the Return of the Commissioner to the writ of *certiorari* issued in aid of *habeas corpus*.

That a change in the Government of said Province of Manitoba and in the political control thereof, took place on or about May 12, 1915, and the Conservative Ministry theretofore in power were supplanted and succeeded by their political adversaries, whereupon the new Government caused investigations and sensational charges of fraud against their predecessors in office to be made, and criminal charges to be preferred against divers of the members of such former Ministry,—Sir Rodmond P. Roblin, Lieutenant Governor and Premier of the deposed Government, George R. Coldwell, and Walter H. Montague, Ministers of Public Works in succession, and James H. Howden, Attorney General in the ousted Conservative administration,—charging that they did between May 1, 1913, and May 12, 1915, unlawfully, by fraudulent means conspire together and with this appellant and

others, to defraud his Majesty the King in the right of said Province. This criminal charge was made on the same day, and by the same complainant as the criminal charges against this appellant. The late Ministers, Roblin, Montague, Coldwell and Howden, were on or about October 1, 1915, after preliminary hearing before the Police Magistrate committed for trial on said charge of conspiracy. (See pp. 21-22, 105, 128, 158 and 159, of Return of the United States Commissioner, in the Transcript herein.) And a violent and sensational outburst of acrimonious and partisan feeling and prejudice in the City of Winnipeg and throughout said Province resulted.

That it is the purpose of the Attorney General of said Province, as this appellant is advised and upon information and belief states, to press the said criminal charges against this appellant, to trial at the coming March Assizes in said Province, in case the appellant is within the jurisdiction of the court of said Province at that time, and at a time when by reason of such public feeling and prejudice a fair trial of the appellant cannot be had. That appellant and his counsel are strengthened in that conviction by the fact that in November, 1915, while the said proceedings for his extradition were still pending before said United States Commissioner at Chicago, and while he was in custody thereunder, the Police or prosecuting authorities of said Province at Winnipeg without any notice whatever to the appellant or his counsel applied to the Secretary of Labor or Immigration authorities at Washington for the summary deportation of appellant under the laws relating to alien immigrants, and before the appellant or his counsel had any information thereof succeeded in securing the issue of a warrant for his arrest for that purpose;

but upon appellant's discovering that fact, his counsel promptly made such representations to the Secretary of Labor that such proceedings were arrested.

Appellant is also advised that such public feeling and prejudice is likely within a few months to exhaust itself and abate, to such extent that he may then look for a fair trial of such charges against him, and it is his purpose, in case and when he is advised by counsel that he may safely look for such fair trial, to return to said Province, without any extradition and to meet such charges. This statement is made without any prejudice whatever to his case before this court, in which he seeks in a proper way to assert his legal right to test the validity of such extradition proceedings.

That appellant about the First of July, 1915, or shortly theretofore, and before any of said criminal charges were made against him, left Manitoba and went to his summer home at Detroit Lakes, Minnesota, where for many years he had maintained such summer home and been accustomed, with his family, to spend a considerable portion of the summers, and he remained in Minnesota until September 30, 1915, when he went to Chicago to meet one of his counsel (who had come to Chicago from Toronto) and to accompany said counsel to St. Paul, Minnesota, there to confer with other counsel who had come there from Winnipeg. That upon his arrival in Chicago on October first, he was arrested by police officers of Chicago, without any process, upon request by telegraph of the Police Commissioner at Winnipeg, to await extradition proceedings to follow. That his purpose in so leaving Manitoba and withdrawing to Minnesota was not to avoid arrest upon said or any criminal charge, none of which were then pending, but was (with that of making a customary visit to his summer home)

to avoid (until his suit next herein mentioned might be determined) his compulsory appearance to testify and produce evidence, and his threatened imprisonment to compel such testimony and production of evidence in case he refused to testify or produce such evidence, before a so-called "Royal Commission,"—which had been appointed by the Lieutenant Governor of said Province, and his compulsory appearance and testimony before which was sought and threatened, and the validity and power of which Commission in the premises appellant, under the advice of counsel, challenged and denied and by suit attacked (first in the courts of said Province and then on appeal to the Privy Council, where his appeal is still pending). That such action was taken upon the advice of counsel that such Royal Commission and its action in the premises were in their opinion *ultra vires*, upon the authority (among other authorities) of the decision of the Privy Council delivered by the Lord Chancellor, in *Attorney General v. The Colonial Sugar Refining Co., Ltd.*, which is reported in Law Reports (1914) Appeal Cases, 237.

6. In case the court should sustain this motion to advance for hearing during the present term, it is respectfully suggested that the case should be set for argument at as late a date during the term as may be, and not earlier than April 17th.

Respectfully submitted,

JOHN S. MILLER

EDWARD OSGOOD BROWN,

Chicago, Ill.,

PIERCE BUTLER,

St. Paul, Minn.,

Counsel for Appellant.

STATE OF ILLINOIS, }
LAKE COUNTY. } ss.

Thomas Kelly, being duly sworn, says that he is the appellant in the above entitled case; that he has read the foregoing objections subscribed by counsel and knows the contents thereof and the statements of fact therein are true of his own knowledge except as to those matters which are therein stated to be made upon information and belief, and as to those matters he believes them to be true.

Subscribed and sworn to before me this 22nd day of
January, A. D. 1916.

Notary Public.



Office Supreme Court, U. S.

FILED

MAR 6 1915

JAMES D. MANER

CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1915.

No. 777

THOMAS KELLY,

Appellant.

vs.

ELVIN J. GRIFFIN, Jailer of Lake County, Illinois,

Appellee.

Appeal from the District Court of the United States for the
Northern District of Illinois, Eastern Division.

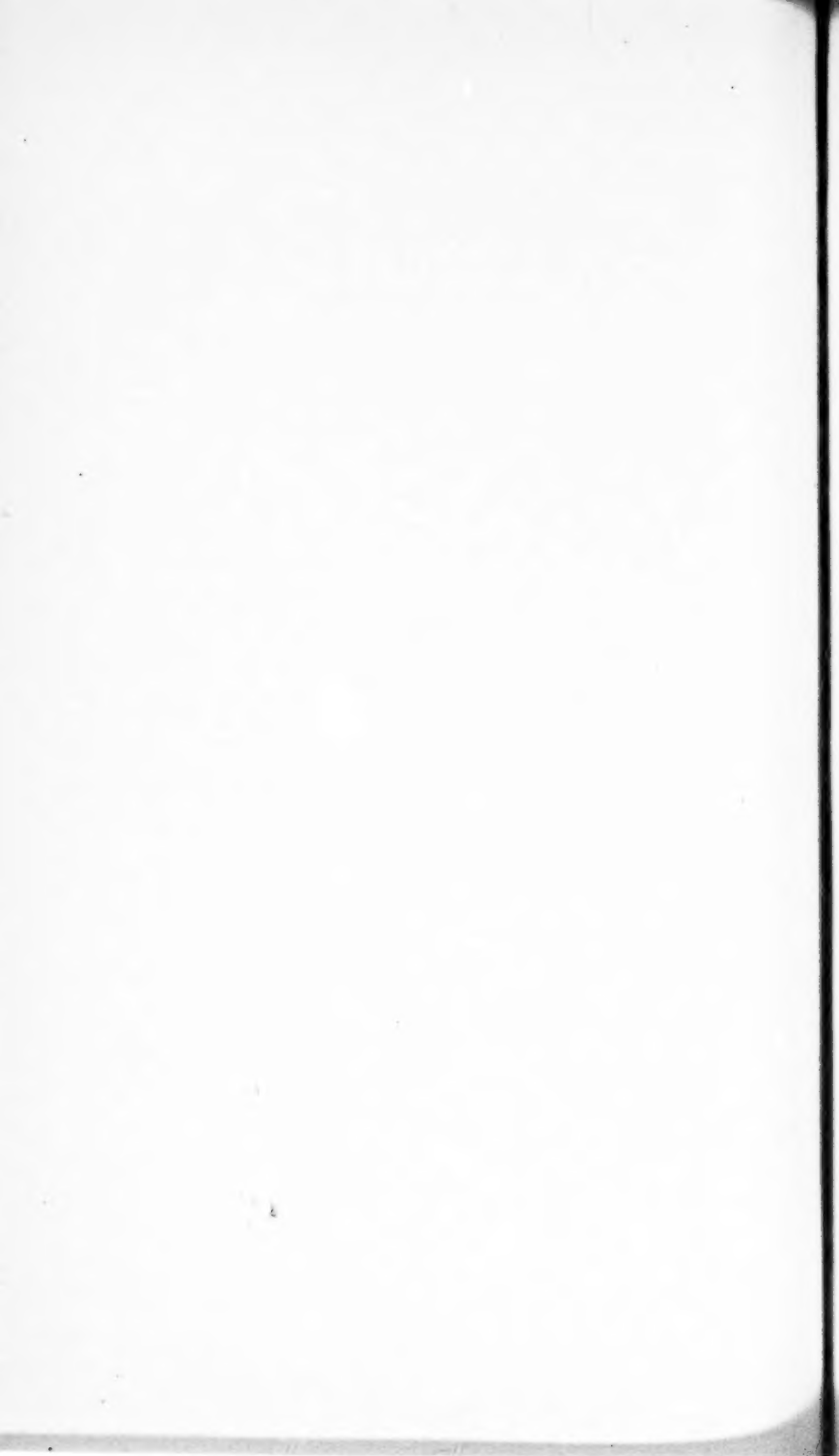
Motion to Make an Additional Party Appellee.

JOHN W. DAVIS,

Solicitor General of the

United States.

CHAMPLIN LAW PRINTING CO.



IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1915.

No. 777

THOMAS KELLY,
Appellant.

vs.

ELVIN J. GRIFFIN, Jailer of Lake County, Illinois,
Appellee.

Appeal from the District Court of the United States for the
Northern District of Illinois, Eastern Division.

Motion to Make an Additional Party Appellee.

Now comes John J. Bradley, United States Marshal for the North District of Illinois, by John W. Davis, solicitor general, and moves the court to be added as a party appellee in the above entitled cause without prejudice to the orders heretofore entered in this cause.

JOHN W. DAVIS,
*Solicitor General of the
United States.*

Henry
~~Henry~~ B. F. MACFARLAND,
ALMON W. BULKLEY,
CLAIR E. MORE,
Of Counsel.

SUGGESTIONS FOR MOTION.

This is an appeal from an order discharging a writ of habeas corpus, dismissing the petition and remanding the prisoner to the jailer of Lake county, Illinois, it appears from the record filed here that the writ of habeas corpus was originally directed to John J. Bradley, United States Marshal for the Northern District of Illinois (Printed Record 16). Subsequently, by supplemental petition Elvin J. Griffin, sheriff of Lake county and keeper of the jail thereof, was added as a party to said petition for writ of habeas corpus (Printed Record 312).

The return to the writ was made by John J. Bradley, United States Marshal for the Northern District of Illinois, and Elvin J. Griffin, keeper of the jail of Lake county, Illinois (Printed Record 317).

Upon the dismissal of the petition and the discharge of the writ the District Court remanded the appellant to the custody of Elvin J. Griffin, jailer of Lake county, Illinois (Printed Record 322). On November 26, 1915, an appeal was prayed and allowed to the Supreme Court of the United States from this order (Printed Record 327).

Up to this point the name of John J. Bradley, United States marshal, appeared as a party to all orders and proceedings.

On November 27, 1915, a citation for this appeal was issued, directed to Elvin J. Griffin, jailer of Lake county, Illinois, only (Printed Record 330).

Subsequently, on the 13th day of December, 1915, the appeal bond was approved and it was provided in that order (Printed Record 327) "that pending the said appeal, the said Thomas Kelly shall be detained in the custody of the jailer of Lake county, Illinois, to answer the judgment of the Supreme Court on said appeal, etc."

Subsequently and on the 19th day of February, 1916, an order was entered in the District Court taking Kelly from the custody of the jailer of Lake county, Illinois, and transferring him to John J. Bradley, United States Marshal for the Northern District. A copy of this order is hereto attached and made a part hereof as an appendix hereto.

The custody of the said appellant now being in John J. Bradley, United States Marshal for the Northern District of Illinois, I respectfully submit that he should be a party to this appeal as an appellee.

JOHN W. DAVIS,
*Solicitor General of the
United States.*

Henry
~~Henry~~ B. F. MACFARLAND,
ALMON W. BULKLEY,
CLAIR E. MORE,
Of Counsel.

APPENDIX.

IN THE DISTRICT COURT OF THE UNITED STATES

NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION.

February 19, 1916.

Present: Honorable Kenesaw M. Landis, District Judge.

Thomas Kelly,	}	Habeas Corpus. 32288.
<i>Petitioner</i>		
<i>vs.</i>		
Elvin J. Griffin,		
<i>Jailer of Lake county, Illinois.</i>		

Comes now the petitioner, Thomas Kelly, and renews his motion herein for enlargement on bail pending his appeal to the Supreme Court of the United States from the order of this court, discharging the writ of habeas corpus issued herein, and dismissing the petitioner's petition therefor, and is argued by John S. Miller and Pierce Butler for said petitioner, Almon W. Bulkley and Clair E. More, appearing for the British Consul General at Chicago, and thereupon, after due consideration thereof by the court.

It is ordered that the petitioner's said motion for enlargement on bail be and the same is hereby denied.

Thereupon arose the question of the proper construction of the orders heretofore entered herein with reference to the custody of the said Thomas

Kelly pending his appeal from the order of this court to the Supreme Court of the United States, and the final disposition thereof by that court; and also arose the question of the due performance of said orders by the respondent, Elvin J. Griffin, jailer of Lake county, Illinois; and thereupon the court of its own motion examined said Elvin J. Griffin, jailer of Lake county, Illinois; as aforesaid, and other witnesses regarding the way and manner in which the petitioner, Thomas Kelly, had been kept in custody, after which said examination and hearing of the parties respectively, and after due consideration of the same, and without determining the question of performance under said order as being unnecessary thereto.

It is ordered that the respondent, Elvin J. Griffin, forthwith surrender the said Thomas Kelly to the custody of John J. Bradley, Marshal of the United States for the Northern District of Illinois, and that pending the appeal heretofore allowed of said Thomas Kelly to the Supreme Court of the United States from the order of this court, the said Thomas Kelly shall be detained and safely kept by said John J. Bradley, Marshal of the United States for the Northern District of Illinois, to answer the judgment of the Supreme Court on said appeal, unless and until otherwise ordered by the Supreme Court or this court; and that during the period of the detention of said Thomas Kelly hereunder he shall be kept and confined by said marshal in the county jail of Du Page county, Illinois, at Wheaton, Illinois. A certified copy of this order shall be furnished by the

marshal to the jailer of said DuPage county jail as his authority for safely keeping and detaining said Kelly in the county jail of said county.

KENESAW M. LANDIS,
District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES OF
AMERICA, FOR THE NORTHERN DISTRICT OF
ILLINOIS, NORTHERN DIVISION.

I, T. C. MacMillan, clerk of the District Court of the United States of America, for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of an order made and entered in said court on the 19th day of February, A. D. 1916, as fully as the same appears of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this 3rd day of March, A. D. 1916.

(Seal) T. C. MACMILLAN,
Clerk.

SUPREME COURT OF THE UNITED STATES.

October Term, 1915.

Thomas Kelley,	}
Appellant,	
vs.	
Elvin J. Griffin, Jailer of	
Lake County, Illinois,	}
Appellee.	

To John S. Miller, Edward Osgood Brown, Charles L. Cobb and Pierce Butler, Attorneys for Appellant:

You are hereby notified that an application will be made to the Supreme Court of the United States on Monday, the 6th day of March, A. D. 1916, for leave to add the name of John J. Bradley, United States Marshal for the Northern District of Illinois, as an appellee in the above entitled cause, without prejudice to the orders heretofore entered herein, a copy of the motion and suggestions herewith handed you.

JOHN W. DAVIS,
Solicitor General of the
United States.

Received a copy of the foregoing notice this 3rd day of March, 1916.

JOHN S. MILLER,
EDWARD OSGOOD BROWN,
PIERCE BUTLER,
CHARLES L. COBB.

Office Supreme Court, U. S.

FILED

MAR 27 1916

JAMES D. MAHER

CLERK

IN THE
SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, A. D. 1915.

No. 777.

THOMAS KELLY,

vs.

ELVIN J. GRIFFIN, Jailor of Lake County,
Illinois, and JOHN J. BRADLEY United
States Marshal,

Appellant,

Appellees.

} Appeal from the Dis-
trict Court of the
United States for
the Northern District
of Illinois.

BRIEF OF APPELLANT.

BARNARD & MILLER PRINT, CHICAGO.



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IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1915.

THOMAS KELLY,

Appellant,

vs.

ELVIN J. GRIFFIN, Jailer of Lake County,
Illinois, and BRADLEY, United
States Marshall,

Appellee.

} Appeal from the Dis-
trict Court of the
United States for
the Northern District
of Illinois.

BRIEF OF APPELLANT.

This is an appeal from the final order of the District Court, discharging a writ of *habeas corpus* issued upon petition of appellant, and remanding him to the custody of appellee, Griffin. The petition was filed to procure appellant's discharge from the custody of Griffin, jailer of Lake County, Illinois, to which he stood committed by the warrant of Lewis F. Mason, United States Commissioner, to abide the order of the Secretary of State for his extradition to Canada, to answer certain criminal charges at Winnipeg, in the Province of Manitoba. A writ of *certiorari* also issued requiring the Commissioner to certify the proceedings before him, to which writ return was made.

(NOTE—Unless otherwise stated, figures in brackets refer to pages of the printed transcript of record.)

STATEMENT OF CASE.

I.

AS TO JURISDICTION OF THE PERSON OF APPELLANT.

Appellant was arrested, forcibly and without any warrant or other process, and therefore (as we contend) unlawfully, at the Blackstone Hotel, Chicago, by police officers of the City of Chicago, on Friday, October 1, 1915. He resisted, but yielded to threat of superior force. (239, 242-243.) The arrest was made pursuant to a telegram of that date from one McRae, Commissioner of Police at Winnipeg, Manitoba, to the Chicago Chief of Police, of the following tenor (241):

"Arrest and hold Thomas Kelly. Charge, obtaining by false pretenses One Million Two Hundred and Fifty Dollars. Warrant issued. Will most likely be pointed out to you. Description, Age about sixty; six ft. one; hair and mustache dark, turning gray; brown eyes. Was a prominent contractor here. Extradition proceedings will follow."

On the same day, after appellant's arrest, the Chief of Detectives of the City of Chicago, sent a telegram to McRae at Winnipeg, of the following tenor (245):

"Wire name complainant, amount involved, date of crime and all other data for fugitive warrant. Kelly under arrest; is fighting. Wire immediately tonight. Unless information at hand by eight Saturday morning Kelly will be discharged by court. Rush."

Following his arrest, appellant was held in cus-

tody by the Chicago police until next morning (October 2d), and was then by them taken to the office of United States Commissioner Mason (243, 246), and there turned over by them to the United States Marshal. (243, 246-48.)

A complaint was made before the commissioner by one Bernays, British Vice Consul General at Chicago, upon information and belief based upon the telegraphic communications to the Chicago police from the Attorney General and police authorities of the Province of Manitoba, charging Kelly with the crimes in Manitoba of obtaining money under false pretenses; of receiving money, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained; and of perjury, and alleging that warrants had been issued by the proper authorities of said province therefor, and that he was a fugitive from justice and was then within the United States. (21, 295.) Thereupon a warrant was issued by the commissioner to the marshal. (290, 293.) The custody of appellant (without his being set at liberty) was, there in the commissioner's office, turned over by the Chicago police officers to the marshal. (243, 248.)

The proceedings before the commissioner were adjourned at complainant's instance until October 15, 1915 (296, 311), at which time (appellant being present in the custody of the marshal), an amended or new complaint of Nugent, British Consul General, was filed, and warrant issued and placed in the hands of the marshal, the reading of the new warrant being waived by counsel for appellant, who was already in the marshal's custody; and the former complaint was abandoned and dismissed. (32, 40 to 45.)

Thus it appears from the record,—we say it without the least disrespect and only because we conceive and shall contend it has an important bearing,—that the arrest and detention of Mr. Kelly by Chicago police officers without any warrant or authority of law, so that he might be already in secure (if unlawful) custody when, later, proceedings under the Act of Congress might be taken for his extradition to Winnipeg, for alleged offenses there committed, were instigated and directed by the authorities of Manitoba.

The custody of appellant by the marshal (which was taken from the Chicago police officers on the morning of October 2d), continued without any interval of liberty, until he was, on November 11th, at the conclusion of the hearing before the commissioner, committed to the jailer of Lake County by the United States Commissioner to await extradition.

It was contended on the part of the appellant before the commissioner (240, 267, 268), and before the District Court (15), as ground for his discharge from custody—and is here contended to be ground for reversal—that because his arrest and detention was thus unlawful, the commissioner was without jurisdiction of his person.

II.

AS TO THE COMPLAINT AND CHARGES OF CRIME AND THE EVIDENCE TO SUPPORT THEM.

The complaint of the British Consul General, Nugent (40 to 42), first charges generally that appel-

lant had been guilty of the crimes of (1) perjury; (2) obtaining money by false pretenses; and (3) larceny or embezzlement, and the obtaining of money, knowing the same to have been embezzled, stolen or fraudulently obtained; and proceeds with a more specific statement of the charges as follows:

“Second—That he, the said Thomas Kelly, on or about the 26th day of March, A. D. 1915, at Winnipeg, aforesaid, did unlawfully commit perjury by swearing in a judicial proceeding, to wit: before the Public Accounts Committee of the Legislative Assembly of the Province of Manitoba, in words to the effect that the proportions in which the ingredients were in the concrete in the caissons of the new parliament buildings at Winnipeg in Manitoba, constructed by Thomas Kelly and Sons, were one, two and four, or one and six, one of cement, two of sand and four of broken stone, and that the amount of cement was a little over a barrel and one-half in each cubic yard of concrete in said caissons, such assertion being then and there known to the said Thomas Kelly to be false and being intended by him to mislead the committee, contrary to the statute in such case provided.

Third—That said Thomas Kelly was also then and there guilty of the crime of obtaining money by false pretenses; that between the 16th day of July, 1913, and the 1st day of January, A. D. 1915, at Winnipeg aforesaid, the said Thomas Kelly did unlawfully obtain for the firm of Thomas Kelly and Sons, from the provincial officers of the Province of Manitoba, having the care, custody, control and disbursing of public funds, with intent to defraud

His Majesty the King in the right of the Province of Manitoba in the Dominion of Canada, the sum of, to wit: \$1,250,000; that he obtained during the period aforesaid \$779,987 of the moneys of the Province of Manitoba on account of the pretended extra work done and materials furnished in construction of caissons for the new parliament buildings at Winnipeg, upon false and fraudulent representations and statements that Thomas Kelly and Sons had put in upwards of 35,000 cubic yards of reinforced concrete, used 1,213,000 feet of lumber, and 797 5/10ths tons of iron rings and bolts, and that the fair and reasonable value for the concrete was \$12 per cubic yard, \$40 per thousand feet for the lumber, and \$140 per ton for the iron rings and bolts, the said Thomas Kelly then and there well knowing the fact to be that he had not put in said caissons to exceed 23,115 cubic yards of concrete, or used to exceed, to wit: 100,000 feet of lumber, or, to wit: 40 tons of iron rings and bolts, and that the fair and reasonable cost and value of said extra work done and materials furnished, including a ten per cent. profit to said contractors, did not then and there exceed \$99,292.50; that said moneys, and other moneys, were so obtained by said false pretenses and other false pretenses, with intent to defraud His Majesty the King in the right of the Province of Manitoba, contrary to the laws of the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty.

Fourth—That said Thomas Kelly, between the first day of May, 1913, and the first day of May, 1915, at Winnipeg aforesaid, did steal money, valua-

ble securities or other property belonging to His Majesty the King in the right of the Province of Manitoba, and at the said place and times did also unlawfully receive money, valuable securities or other property belonging to His Majesty the King in the right of the Province of Manitoba which had theretofore been embezzled, stolen or fraudulently obtained by means of an unlawful and fraudulent conspiracy entered into between said Thomas Kelly, Sir Rodmond P. Roblin, then and there premier of the Province of Manitoba, Walter H. Montague, then and there Minister of Public Works, James H. Howden, then and there Attorney General, George R. Coldwell, then and there Acting Minister of Public Works and Minister of Education, R. M. Simpson, Victor W. Horwood, then and there Provincial Architect, and others, to defraud His Majesty the King in the right of the Province of Manitoba out of large sums of money by means of false and fraudulent contracts for extras in the construction by the firm of Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, of the new parliament buildings at Winnipeg, Manitoba, and by false and fraudulent estimates and statements of the amount and quantity of labor and materials necessary to make the changes desired, and false and fraudulent and exorbitant values for the same, and that by means of such false and fraudulent scheme, of fraud and deception, entered into, participated in and carried out by said parties, said Thomas Kelly and Sons, of which firm the said Thomas Kelly was a member, fraudulently and feloniously obtained of the moneys of the Province of Manitoba, the sum of, to wit: \$1,250,000 in fraud of His Majesty the King in

the right of the Province of Manitoba and contrary to the laws of the Province of Manitoba in the Dominion of Canada in the domain of His Britannic Majesty."

Brief Summary of Appellant's Contentions.

Our principal contentions with respect to these charges are:

As to Perjury:

(a) That the offense of perjury charged against appellant is not an extraditable crime; that it is not made criminal by the laws of both countries; that the crime of perjury in Canada, with the commission of which he was charged, is not a crime in Illinois where he was apprehended, nor in the United States under the Acts of Congress.

(b) That the legal evidence preferred before the commissioner did not tend to show the commission of the offense, for that the alleged false testimony was not under the sanction of a lawful oath or affirmation, and did not constitute perjury. The Committee of the Legislative Assembly, before which such alleged testimony was given, was not authorized to administer an oath to the witness or to take such testimony.

With respect to each of the other offenses respectively, viz: obtaining money by False Pretenses, and Larceny, or Embezzlement, and Receiving money, etc., knowing the same to have been theretofore embezzled, stolen or fraudulently obtained,—we contend:

(a) That such alleged offense, as presented in the complaint and proofs, is not made criminal by the laws of both countries, and is not the treaty crime or crimes; and

(b) That the legal or competent evidence be-

fore the commissioner did not tend to show the commission by the appellant of such alleged offense.

FURTHER STATEMENT OF CASE AS TO SAID RESPECTIVE
CHARGES AND THE PROOF.

1. *As to Perjury:*

(a) The crime of Perjury, with which the appellant so stands charged, is defined in the Criminal Code of Canada as follows (*italics being ours*):

“Section 170: Perjury defined—Perjury is an assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in a judicial proceeding as part of his evidence, upon oath or affirmation, whether such evidence is given in open court, or by affidavit or otherwise, *and whether such evidence is material or not*, such assertion being known to such witness to be false and being intended by him to mislead the court, jury or person holding the proceeding.

2. Judicial proceeding.—Every proceeding is judicial within the meaning of the last preceding section which is held in or under the authority of any court of justice, or before a grand jury, or before either the Senate or House of Commons of Canada, or any committee of either the Senate or House of Commons, or before any legislative council, legislative assembly or house of assembly or any committee thereof, *empowered by law to administer an oath*, or before any justice, or any arbitrator or umpire, or any person or body of persons *authorized by law or by any statute in force for the time being to make an inquiry and take evidence therein upon oath*, or before any legal tribunal by which any legal right or liability can be established, or before any person acting as a court, justice or tribunal, having power to hold such judicial proceeding, whether duly constituted or not, and whether

the proceeding was duly instituted or not before such court or person so as to authorize it or him to hold the proceeding, and although such proceeding was held in a wrong place or was otherwise invalid. 55-56 V., c. 29, s. 145.

Section 174. Punishment of perjury or subornation of perjury.—Every one is guilty of an indictable offense and liable to fourteen years imprisonment who commits perjury or subornation of perjury.” (226.)

The contention of appellant is that the crime of perjury under the Canadian code which is charged against him and upon which his extradition is sought (of which the materiality of the evidence is not an ingredient) is not a crime in Illinois where he was apprehended, or in the United States,—in each of which jurisdictions the materiality of the evidence is an essential ingredient of the crime. In other words, the crime of perjury charged is not within the treaty or convention between the United States and Great Britain.

(b) We further contend that there was lacking to the offense here the essential requirement of a lawful oath.

The alleged perjury here charged was for a statement of appellant on March 26, 1915, before the committee of the legislative assembly of Manitoba, known as the committee on public accounts. Of course it was an essential ingredient of the offense which must be shown by the proof, that such statement was made under the sanction of a lawful oath; and having that in mind, and to make such proof as there was of the constitution of that committee and its power with respect to making inquiries and examining witnesses and administering oaths to witnesses,

the complainant offered in evidence a transcript of the Journal of the Legislative Assembly of Manitoba, showing the constitution and appointment of the Select Standing Committees of said House for the second session of the Fourteenth Legislature, commencing February 9, 1915 (among which committees was one "On Public Accounts"), and their powers in the premises. The resolution for their appointment provided as follows (*italics being ours*) :

"Which said committees shall severally be empowered to examine and inquire into all *such matters and things as may be referred to them by the House*, and to report from time to time their observations and opinions thereon, with power to send for persons, papers and records, and to examine witnesses under oath." (52.)

The complainant also for the same purpose introduced in evidence a certified copy of "The Legislative Assembly Act," being "An Act respecting the Legislature of Manitoba," Section 35 of which prescribes the power of such committees as follows (*italics ours*) :

"35. Any select committee of the Legislative Assembly, *to which any private bill or other matter or cause has been referred by the House*, may examine witnesses upon oath, upon matters relating to *such bill, matter or cause*, and *for that purpose* the chairman or any member of such committee may administer an oath, in the form in this section contained, to any witness, as follows" (setting forth form of oath). (84.)

The supposed perjury charged consisted of an alleged statement by Mr. Kelly before the Public Accounts Committee, on March 26, 1915, as to the proportions of the ingredients in the concrete in the caissons of the new parliament buildings at Win-

nipeg, under construction by the firm of Thomas Kelly & Sons, contractors therefor. (40, 94.)

There is nothing, however, either in the Legislative proceedings offered in evidence, or otherwise in the proofs presented before the Commissioner, showing or tending to show (as the resolution creating the committee and said Legislative Assembly Act required) any reference by the Legislative Assembly of Manitoba to the Committee on Public Accounts of the subject matter about which Mr. Kelly was speaking or being examined, or upon any bill, matter or cause as to which the alleged testimony of the appellant, which is charged to constitute perjury, was given. So far as the evidence before the Commissioner shows or tends to show, the proceeding and action here in question of the Committee on Public Accounts were taken of its own initiative without any reference to it by or authority from the House. Appellant caused inquiry to be made whether any such reference to the Public Accounts Committee was made by the Legislative Assembly, but learned of none. (9.)

Among the papers offered in evidence on such perjury charge, there was also a copy of an affidavit or deposition of John Allen, that he is a practicing barrister and attorney for said Province in Winnipeg and deputy attorney general for said Province. He states the provisions of said sections 170, 171 and 174 of the Canadian Criminal Code above set forth, and further says:

“The Public Accounts Committee of the Legislative Assembly of the Province of Manitoba is one of the select standing committees appointed by the Legislative Assembly of the Prov-

ince of Manitoba to examine and inquire into the public accounts of the Province of Manitoba for the year preceding the appointment of said committee, and also into all matters pertaining to the said public accounts. Section 35 of 'the Legislative Assembly Act' of the Province of Manitoba, being chapter 112 of R. S. M., 1913, empowers the said Public Accounts Committee to examine witnesses on oath. Such a committee as the Public Accounts Committee, aforesaid, forms an important part of the legislative machinery under the British form of government."

Section 35 of the Legislative Assembly Act, to which Mr. Allen refers, was offered in evidence with his deposition, and in plain terms speaks for itself. (*Supra*, p. 11; Print, Rec., 84.) It empowered the committee to examine witnesses upon oath in relation to such private bill, or matter or cause as had been referred to the committee by the house.

Mr. Allen added the following conclusion of fact, which it was the function of the United States commissioner, and not that of the witness, to draw:

"I have perused the depositions attached hereto, and, in my opinion, the evidence disclosed by the said depositions shows the crime of perjury, aforesaid, under the laws of Canada." (90.)

The above testimony of Mr. Allen was duly objected to on this ground and as incompetent (262-263).

The appellant contends that there was no legal or competent evidence before Commissioner Mason tending to show, or upon which he could exercise his judgment and find the essential ingredient of the crime, viz., that the Committee on Public Accounts was empowered to administer the oath to Mr. Kelly or

that his statement before the committee was made under the sanction of a lawful oath; and that question is here presented.

2. *As to the charge of obtaining money by false pretenses:*

The crime of false pretenses is defined and dealt with in Sections 404, 405, 405a and 406 of the Criminal Code of Canada, which were offered in evidence by the complainant and are as follows (Pr. Trans., 225):

Section 404.—False Pretenses—Definition: A false pretense is a representation, either by words or otherwise, of a matter of fact either present or past, which representation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation.

2. Exaggerated commendation or depreciation of the quality of anything is not a false pretense, unless it is carried to such an extent as to amount to a fraudulent misrepresentation of fact.

3. It is a question of fact whether such commendation and depreciation does or does not amount to a fraudulent misrepresentation of fact. 55-56 V., c. 29, s. 358.

Section 405.—Punishment for obtaining by false pretense.—Everyone is guilty of an indictable offense and liable to three years' imprisonment, who, with intent to defraud, by any false pretense, either directly or through the medium of any contract obtained by such false pretense, obtains anything capable of being stolen, or procures anything capable of being stolen to be delivered to any other person than himself. 55-56 V., c. 29, s. 359.

Section 405a.—Obtaining credit by false pre-

tenses.—Everyone is guilty of an indictable offense and liable to one year's imprisonment who, in incurring any debt or liability, obtains credit under false pretenses, or by means of fraud. (Added by 7-8 Ed. VII., c. 18, sec. 6.)

Section 406.—Obtaining execution of valuable security by false pretense.—Everyone is guilty of an indictable offense and liable to three years' imprisonment who, with intent to defraud or injure any person by any false pretense, causes or induces any person to execute, make, accept, endorse, or destroy the whole or any part of any valuable security, or to write, impress, or affix any name or seal on any paper or parchment in order that it may afterwards be made or converted into or used or dealt with as a valuable security. 55-56 V., c. 29, s. 360."

The provision of the Illinois statutes defining False Pretenses is as follows:

"Section 96.—Whoever, with intent to cheat and defraud another, disinterestedly by color of any false demand or writing, or by any false pretense, obtains the signature of any person to any writing, instrument, or obtains from any person any money, personal property or other valuable thing, shall be fined in any sum not exceeding \$2,000, and imprisoned not exceeding one year, and shall be sentenced to restore the property so fraudulently obtained if it can be restored. No indictment for the obtaining of any property or thing by any false pretense or pretenses shall be quashed, nor shall any person indicted for such offense be acquitted, for the reason that the facts set forth in the indictment, or appearing in evidence, may amount to a larceny or other felony; nor shall it be deemed essential to a conviction, that the property in the goods or things so obtained shall pass with the possession to the person so obtaining it." (Rev. Stat. Ill., Ch. 38, Sec. 96; Hurd's Stat. 824; 1 Jones & Add., Ill. Stat. Ann., pp. 2033-34, par. 3.)

The charge and averments of the complaint before the United States Commissioner appear *supra*, p. . The complaint at Winnipeg appearing at page 116 of the printed record is still more meager and insufficient.

The proof tends to show :

That on July 16, 1913, the firm of Thomas Kelly and Sons, contractors (composed of appellant and three sons, Lawrence C., Charles B. and Robert Emmet Kelly), was awarded and entered into a contract for the construction at Winnipeg of new parliament buildings for the Province of Manitoba, for \$2,859,750. (125.) That the specifications on which the bids were asked and the contract was awarded called for pile foundations. (*Ibid.*) That it was decided by the authorities of the Province to construct caisson foundations instead of piling. That the Provincial Architect, who was in charge of the work, and the contractors, agreed on prices for the caisson work. The caisson work commenced the latter part of August, 1913 (118, 122, 126), and appears to have been carried to completion in the spring of 1914. (147, Exch. 12.)

Other changes in the work were made and other contracts were entered into respecting portions of this work,—one of August 26, 1913 (153); one of March 26, 1914 (148); one of May 22, 1914 (154); one of June 20, 1914 (151); and one of December 23, 1914 (128). None of the contracts or specifications were offered in evidence or produced before the United States Commissioner. It appears from the evidence for complainant that the contracts were made on behalf of the King or Province by the Min-

ister of Public Works for the Province of Manitoba. (123, Lyall.) Work under these contracts and under the original contract of July 16, 1913 (other than the caisson foundations), appears to have gone on until the summer of 1915.

Payments by check on account of the caisson work commenced Nov. 29, 1913 (132, Exh. 2; p. 131, Exh. 5; 145, Exh. 7); and from that date until June 23, 1914, there were issued upon vouchers of the Provincial Authorities and given to the firm of Thomas Kelly and Sons, on account of such caisson foundations, checks of the Provincial Treasurer and the Provincial Auditor on the Union Bank of Canada at Winnipeg to the order of said firm, amounting altogether to \$779,987 or thereabouts. (129 to 131, 132, 133, 134, 137, 145 to 147.) On account of the other contracts and work other similar checks were given upon similar vouchers. (129 to 154.)

As we understand it, the contention of appellee is that the receipt and collection by the firm of Thomas Kelly and Sons of these checks constituted the supposed "obtaining" by the appellant of the money which is charged to have been obtained by false pretenses.

Preliminary or prior to the payments, so-called applications for payment or "progress estimates" were made from time to time by said firm of Thomas Kelly and Sons to the Provincial Architect. It is understood that these applications or "progress estimates" are relied upon by the appellee as constituting the alleged "false pretenses" on the part of appellant.

Having in mind the elements of the crime of ob-

taining by false pretenses, the material circumstances (other than those above stated), under which these checks were issued by the provincial officers and obtained by the firm of Thomas Kelly and Sons were these:

This work was done by the contractors under the supervision, inspection and observation of the Provincial Architect (Horwood); and inspectors (Elliott, Villeroy and Salt) under the architect were continuously on the work to measure and keep track of the work done and see that the contractors complied with the contract and specifications and the directions of the architect in charge of the work. (118, 122.) So that the facts with respect to the work were all the time known to the Provincial Architect, and he could not have relied on the contractor.

The payments were made, not upon faith of these applications of the firm of Thomas Kelly and Sons, but upon vouchers coming from the Department of Public Works and properly certified by the officers of that department having charge of the expenditure, and then passing to the council (of ministers) and then to the Provincial Auditor and Provincial Treasurer. Such voucher in case of every payment by the architect were submitted to the minister of public works, and thereon "orders in council were passed," upon which the Provincial Auditor and Provincial Treasurer gave the check in payment. (126.) The course of business here was testified to by the Provincial Auditor, Mr. Fearnley, and by the Deputy Provincial Treasurer, Mr. Ptolemy. Mr. Ptolemy testified (*italics being ours*):

"In order to obtain money from his majesty the king, it is necessary that there should be a

proper voucher coming from the department authorizing the expenditure and properly certified by the officers of that department having charge of the expenditure, then passing through the hands of the auditor to our department for payment. In the case of payments in respect of the parliament buildings, a proper voucher would be presented to the auditor for the Province, accompanied by, among other things, the certificate of the architect, and without this document payments will not be made. The auditor is Frederick Fearnley. *This practice was followed in every instance of payments being made to Thomas Kelly and Sons in connection with the new parliament buildings.* All cheques are signed by the Provincial Treasurer or by myself and are countersigned by the Provincial Auditor beforehand." (118-119.)

Mr. Fearnley, auditor of the province, testified:

"In order to obtain money from his majesty the king, it is necessary that a proper voucher be presented to the auditor, and in the case of payments in respect to the new parliament buildings that a proper voucher be presented to the auditor for the province accompanied among other things by the certificate of the architect, and without these documents payment will not be made. In respect to each of the payments made to Thomas Kelly and Sons the voucher was accompanied by the certificate of the architect certifying that Thomas Kelly and Sons were entitled to the amount of money set out in said certificate and cheques payable to Thomas Kelly and Sons were thereupon issued for the amount set out in each certificate, which cheques had to be signed by the Provincial Treasurer or his deputy and by the auditor or acting auditor of the province. Now shown to me marked 'Exhibits 1 to 19' are cheques issued to Thomas Kelly and Sons in pursuance of such vouchers and certificates and all of the said cheques have been paid to the said Thomas Kelly and Sons

out of the money belonging to his majesty the king." (124.)

The architect (Horwood) testified that one McTavish, an accountant in his office, made out certificates based upon the applications for payment by Thomas Kelly & Sons, and he, Horwood, signed these certificates on the basis of such applications for payment, and says:

"I completed the certificates hereinbefore referred to for the minister of public works, and on my certificates orders-in-council were passed upon which there was paid to the said Thomas Kelly & Sons," etc. (126.)

Horwood did not testify that he relied or acted upon the applications for payments made by said firm of Thomas Kelly & Sons as representations of the actual amount of work done, or was deceived thereby, or believed them to be accurate statements. It was the obvious duty of the architect under the contract to rely and act upon his own supervision of the work and the inspection and reports of his inspectors as his proper source of information as to the work. Moreover, the architect (Horwood) further testified that he did not rely on these applications or progress estimates but that after certain interviews with one Dr. Simpson (the president of the Conservative Association of the City of Winnipeg) and with the minister of public works (Caldwell), which took place after the construction of the caissons had been commenced (in August, 1913), and so before any payments were made,—he, the architect, "paid no attention to the caisson estimates,—merely signing what was presented to me in the way

of progress estimates or certificates, such as Exhibits 1 to 6." (181, 266.)

McTavish, the clerk in the architect's office, testified that believing in and acting upon the correctness of these applications, he made out certificates for signature by the provincial architect that the said firm was entitled to be paid the amounts. (125.)

Among the depositions offered by complainant before the commissioner was one of Mr. Allen (to whom reference has been before made), that he had perused the depositions attached, and in his opinion the evidence disclosed thereby "shews the crime of obtaining by false pretenses, aforesaid, under the laws of Canada." (128-129.) The law of Canada upon the question was before the commissioner, and Mr. Allen's statement was objected to as a conclusion of fact upon the evidence,—the duty of drawing which was vested solely in the commissioner; and Mr. Allen's testimony was objected to as incompetent. (262-263.)

It is appellant's contention that the necessary elements of the crime of obtaining money, etc., by false pretenses, whether under the statute of Canada, or under the law of Illinois, are absent here in complaint and in proof to give jurisdiction to the United States Commissioner.

3. *As to the charge or charges of Stealing or Embezzlement, and Receiving money, etc., knowing the same to have been embezzled, stolen or fraudulently obtained.* (41-42):

While the word "embezzlement" appears in the general charge in the beginning of the complaint

before the United States Commissioner (40) the criminal complaint against appellant at Winnipeg does not charge embezzlement. That complaint (161-162) and the averments of the complaint at Chicago (41-42) are confined to charges of stealing money, valuable securities or other property belonging to the King, and of unlawfully receiving money, valuable securities or other property which had theretofore been embezzled, stolen or fraudulently obtained.

The criminal complaint against Mr. Kelly at Winnipeg, on which the warrant for his arrest there was issued charged that between May 1, 1913 and May 12, 1915, at Winnipeg, he "unlawfully stole money, valuable securities or other property belonging to his Majesty the King in the right of the Province of Manitoba, and at the said place and times also unlawfully received money, valuable securities or other property belonging to his Majesty the King or the right of the Province of Manitoba, which had theretofore been embezzled, stolen or fraudulently obtained by means of an unlawful conspiracy by fraudulent means, between Thomas Kelly aforesaid, Sir Rodmond P. Roblin, Walter H. Montague, James H. Howden, George R. Coldwell, R. M. Simpson, Victor W. Horwood and others to the informant unknown, to defraud his Majesty the King in the right of the Province of Manitoba, the said Thomas Kelly, then and there well knowing that said money, valuable securities or other property had theretofore been embezzled, stolen or fraudulently obtained by means of the said unlawful conspiracy, contrary to the form of the statute, made and provided." (161-162.)

The averments of the complaint before the United States Commissioner with respect to this third charge appear, *supra*, p. 6-7.

As we understand the case, it is the same acts of the firm of Thomas Kelly & Sons in receiving and collecting the checks of the treasurer of the province, which are above referred to in connection with the charge of obtaining money by false pretenses, that are relied upon by the complainant as constituting the gist or gravamen of this third criminal charge or charges here under consideration.

As to Theft or Stealing:

The offense of theft or stealing is defined in Section 347 of the Criminal Code of Canada, introduced by complainant, as follows (*italics ours*):

“Section 347 and Sub-Sections.—Thefts defined.—Theft or stealing is the act of fraudulently *and without color or right taking*, or fraudulently and *without color of right converting* to the use of another person, anything capable of being stolen, with intent,” etc. (224.)

So far from these checks being taken or received or converted to the use of said firm “without color of right,”—which is essential to constitute the crime of theft or stealing,—the checks were made and delivered and the payments made to said firm, upon proper vouchers of the provincial officers, as is above set forth in the statement with respect to the charge of false pretenses. (*Supra* p. ; Testimony of Ptolemy p. 164, and Fearnley p. 177.) There was then no evidence to support the charge of theft or stealing.

As to Embezzlement:

There is no provision in the Canadian Criminal Code defining "Embezzlement." There is a provision in Section 359 making it an indictable offense (liable to fourteen years' imprisonment) for a clerk or servant to steal anything belonging to or in possession of his employer; or for a cashier, manager, officer, clerk or servant of any bank to steal any bond or security or money or deposit with such bank; or for an employe of the dominion or any provincial or municipal government to steal anything in his possession by virtue of his employment. (224.) There is in Section 390 (*ibid.*) punishment provided for criminal breach of trust by a trustee of any property for the use of some other person or for any public or charitable purpose. But so far as we are able to see, there is nothing in the evidence produced before the Commissioner or in this record in any way tending to show embezzlement or a violation by appellant of the provisions of Sections 359 or 390.

There was no trust relation on the part of appellant or the firm of Thomas Kelly & Sons to the Province of Manitoba.

With respect to the charge of receiving money, valuable security or other property knowing the same to have been embezzled, stolen and fraudulently obtained:

The Canadian statutes most closely applicable here are Sections 399, 400 and 402 of the Criminal Code, introduced by complainant (225) which are as follows:

"Section 399.—Receiving property obtained by any indictable offense.—Everyone is guilty

of an indictable offense and liable to 14 years imprisonment who receives or retains in his possession anything obtained by any offense punishable on indictment, or by any acts wheresoever committed, which, if committed in Canada, would have constituted an offense punishable upon indictment, knowing such thing to have been so obtained.

Section 400.—Receiving stolen property.—Everyone is guilty of an indictable offense and liable to five years' imprisonment who receives or retains in his possession any post letter or post letter bag, or any chattel, money or valuable security, parcel or other thing, the stealing whereof is hereby declared to be an indictable offense, knowing the same to have been stolen.

Section 402.—When receiving is complete.—The act of receiving anything unlawfully obtained is complete as soon as the offender has, either exclusively or jointly with the thief or other person, possession of or control over such thing, or aids in concealing or disposing of it."

There is no such offense known to the laws of Illinois as the treaty offense of receiving, etc., here charged, although there is a statute applicable to the receiving of stolen goods.

We maintain that there is no such offense in Illinois where the caption of Mr. Kelly took place.

It is our contention that it is an essential ingredient—the gist—of the extradictable offense of receiving money, valuable security or other property knowing the same to have been embezzled, stolen or fraudulently obtained,—which is mentioned in the Extradition Treaty of July 12, 1889, and for which Mr. Kelly's extradition is sought,—that the money security or property received by the accused should have been theretofore embezzled, stolen or fraudu-

lently obtained by someone other than himself, from whom the money or property was so received by him. Indeed that is made so by the very terms of the complaints against Mr. Kelly in Canada (161-162) and before the United States Commissioner (41), averring that the moneys, etc., so unlawfully received by him had "theretofore been embezzled, stolen or fraudulently obtained." But that ingredient is here entirely lacking in the proof submitted.

In other words, we contend that the supposed offense here for which the United States Commissioner committed the appellant to await extradition, is not said treaty offense for which he was apprehended and subjected to such examination before the Commissioner.

As above stated, the charge here of receiving money, valuable securities or other property which had been embezzled, stolen or fraudulently obtained, so far as the proofs disclose, can only refer to the act of the firm of Thomas Kelly & Sons in receiving from the Province of Manitoba the checks above mentioned on account of such contracts and work thereunder. The proofs here with respect to this charge is of the same payments which have been referred to in connection with the charge of obtaining money by false pretenses. (*Supra*, p. 17; Rec., 164; depo. of Ptolemy; *id.* pp. 177-178, depo. of Fearnley; *id.* pp. 190-219, checks and exhibits.) The same acts and transactions, were offered in evidence as constituting the respective crimes of obtaining by false pretenses, theft or larceny and receiving money, security or property which had been embezzled, stolen or fraudulently obtained. The proof stops with the receipt of the checks by the firm of Thomas Kelly

& Sons, and their payment by the bank on which they were drawn.

There is no evidence in the record which tends to show that these checks, or the proceeds thereof, when they were received by the firm of Thomas Kelly & Sons had been theretofore embezzled, stolen or fraudulently obtained. That hypothesis is disproved.

There is no evidence in the record which tends to show that the appellant personally received those checks, or any or either of them, or the proceeds or any part thereof.

There are other provisions of the Canadian Code (Section 69) making one a party to an offense, who does or commits an act for the purpose of aiding any person to commit the offense; or abets any person in its commission; or counsel's or procures any person to commit the offense; and making each one of several persons a party to every offense committed by any one of them in prosecution of the common purpose, where they all have formed a common intention to prosecute any unlawful purpose and to assist each other therein (223); and (Section 70) making every one a party to the offense who counsels or procures another to be a party to an offense. (223-224.)

The evidence tended to show that on August 28, 1915, criminal complaint was made by one Elliott, Chief of Provincial Police at Winnipeg, before a Police Magistrate, charging that Sir Rodmond P. Roblin, Walter H. Montague, George A. Coldwell and James H. Howden between May 1, 1913 and May 12, 1915, at Winnipeg, did unlawfully and by fraudulent means conspire together, and with

Thomas Kelly, R. M. Simpson, Victor W. Horwood and others to defraud His Majesty the King in the right of the Province of Manitoba. (161.) And that said Roblin, Montague, Coldwell and Howden were committed on or about October 1, 1915, for trial on the charge of conspiracy after a preliminary hearing (160). Section 444 of the Canadian Criminal Code makes it a criminal offense for a person to conspire with any other person to defraud the public or any person. (160.) But that offense is not within the extradition treaty; and Mr. Kelly's extradition is not here sought upon that charge.

It is suggested that the attempt has been made in arraying the evidence for these extradition proceedings to bring the case of alleged conspiracy to defraud which is not extraditable, into the shape or semblance of other offenses which are extraditable and which are here charged.

SPECIFICATIONS OF ERROR.

1. The District Court erred in holding that the United States Commissioner had jurisdiction of the person of the Appellant; and in not holding that said Commissioner was without such jurisdiction and in not discharging appellant therefor.

2. The District Court erred in not holding that the crime of perjury, with the commission of which in the Province of Manitoba in the Dominion of Canada, this appellant was charged before said United States Commissioner, is not the crime of perjury denounced by the laws of Illinois or by the laws of the United States, and in not holding that the same is

not a crime in Illinois or in the United States, and is not the crime of perjury mentioned in the treaty or convention of 1889 between the United States and the Kingdom of Great Britain and Ireland, and is not one of the crimes or offenses specified in any extradition treaty or convention between the United States and Great Britain, and in not holding that the same is not an extraditable crime or offense.

3. The District Court erred in not holding that the supposed crime of unlawfully receiving money, valuable securities and other property, knowing the same to have been embezzled, stolen or fraudulently obtained, with the commission of which in the said Province of Manitoba this appellant was charged before said United States Commissioner is not a crime in the State of Illinois or under the laws of the United States; and in not holding that this appellant was not extraditable for said supposed crime or offense.

4. The District Court erred in not holding that the competent evidence before the said United States Commissioner did not prove or show that the Committee on Public Accounts of the Legislative Assembly of Manitoba, (in testifying or making statements before which Committee, it was charged before the said United States Commissioner that this appellant committed perjury in said Province of Manitoba), had any power to administer an oath to said Thomas Kelly as a witness before such Committee, or that the Chairman or any member of said Committee had any such power to administer an oath.

5. The District Court erred in holding that the

competent evidence before the said United States Commissioner tended to prove or show that the said appellant committed perjury in the said Province of Manitoba, as charged in the said complaint before said Commissioner.

6. The District Court erred in holding that the competent evidence before the said United States Commissioner tended to show that the said appellant committed the crime of obtaining money by false pretenses, as charged against him.

7. The District Court erred in holding that the competent evidence before the said United States Commissioner tended to show that the said appellant committed the crime of stealing or theft, or embezzlement, or obtaining money, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained.

8. The District Court erred in not holding that the said pretended offenses charged against the said appellant before the said United States Commissioner are not made criminal by the laws of both countries within the provision and meaning and contemplation of treaties in that behalf between the United States and Great Britain. As to each of said charges of the commission of crime the appellant says that the District Court erred in not holding that the offense so charged is not made criminal by the laws of both countries within the meaning of said treaties.

9. As to each of said charges of crime against the said appellant, and as to each of the said alleged offenses severally, with the commission of which the appellant was charged before the said United States

Commissioner, the appellant says that the District Court erred in not holding that there was not such evidence of criminality before the said Commissioner as, according to the laws of the place where the said respondent, Thomas Kelly, was confined, to wit: the State of Illinois, would justify his apprehension and commitment for trial of such pretended crime or offense, had such pretended crime or offense been there committed.

BRIEF OF THE ARGUMENT.

I.

The United States Commissioner did not have jurisdiction of the person of appellant.

Appellant's arrest and detention without warrant were unlawful.

U. S. Rev. Stat., Section 5270.

Ex parte Cohen, 8 Can. Cr. Cas. 312.

Re Walter A. Dickey, (No. 1) *Id.* 318.

State v. Shelton, 79 N. C. 605, 607-8.

Malcolmson v. Scott, 56 Mich. 459.

Scott v. Eldridge, 154 Mass. 25.

Harris v. Louisville etc. Ry. 35 Fed. 116.

Kurtz v. Moffitt, 115 U. S. 487.

He could not lawfully be turned over by the Chicago police officers to, or be lawfully taken from them by the United States Marshal. He should have been set at liberty from such illegal arrest and detention before he could be lawfully arrested on the commissioner's warrant.

Ex parte Cohen, supra.

Hooper v. Lane, 6 H. L. Cas. 443.

Mandeville v. Guernsey, 51 Barb. 99.

II.

The enactment by the Parliament of the Dominion of Canada of a statute which gives to a different moral offense, which is not a crime in Illinois

or in the United States or at common law,—the name of a crime mentioned in an Extradition Treaty with Great Britain does not bring such different moral offense within the provisions of the treaty.

Such an enactment however, has been made in the Criminal Code of Canada, and it is under it that the extradition of the petitioner for perjury is sought. (Argument, *post*, pages 47-49.)

III.

By the common law, by the statutes of the United States and by the statutes of Illinois, where the petitioner was seized, a false statement under oath to be "perjury" must be material to the issue pending. Coke 3d Institute 167; Archbold's Cr. Pl. Ev. & Pr., 24th Ed. 1160; *R. v. Townsend*, 10 Cox 356; Sec. 225 of the Criminal Code of Illinois; Sec. 125 of the Criminal Code of the United States. (Argument, *post*, page 48.)

By the statutes of Canada "perjury" is a false statement under oath in a judicial proceeding whether said statement is material or not. This makes the offense against the laws of Canada, there denominated "Perjury"—an entirely different thing from the crime of "Perjury" known to the Common law, to the Statutes of Illinois, or to the Statutes of the United States. (Argument, *post*, page 49-50.)

IV.

The extraditable crime named in the Convention of 1889, enlarging the Webster-Ashburton Treaty of 1842, as "Perjury," is the Common Law

Criminal Code of Illinois, Sec. 225.

Criminal Code of U. S., Sec. 125.

Argument, *post*, pages 47 to 52.

By indirection in 1869 and directly in 1892 and again in 1906, the Dominion Parliament denominated as "Perjury" a moral dereliction which was not and is not a crime at common law, nor by the statutes either of Great Britain or of the United States or of any of them.

This did not affect the meaning of the term "Perjury" as used in the Convention of 1889.

Statutes of Canada) 1869, Chapter 23 of
32-33 V.

) 1886, Chapter 154,
Sec. 5.

) 1892, Chapter 29—
55 & 56 V.

) 1906, Chapter 146,
Sec. 170.

Argument, *post*, pages 52 to 56.

V.

Not only must an offense be named in the treaty as extraditable, it must also be considered a crime in both the demanding and surrendering country.

Wright v. Henkel, 190 U. S. 58.

This the offense denominated "Perjury" in Canada is not. In the United States it is not a crime. (Argument, *post*, page 57.)

VI.

It is not an answer to our position that the Commissioner or court in the United States might have considered the false statement probably material to the matter under investigation by the Canadian Committee.

If extradited for "Perjury" the petitioner may be tried and condemned in Canada without proof or in the face of disproof of that which constitutes "Perjury" in the United States. It is impossible to extradite for "Perjury" from the United States to Canada and avoid this situation. Extradition from the United States to Canada for this alleged crime is therefore not permissible.

United States v. Rauscher, 119 U. S. 407.
(Argument, *post* pages 57 to 63.)

VII.

The alleged false statement of appellant on which the charge of perjury is based was not under oath.

The Public Accounts Committee was without power or authority to examine him under oath, with respect to the matter testified about.

The tribunal must have had jurisdiction of the cause in which the oath was administered, and this committee lacked that jurisdiction.

People v. Pankey, 1 Scam. 80.

Maynard v. People, 135 Ill. 416.

Hereford v. People, 197 Ill. 222.

VIII.

The complaints and the competent evidence before the Commissioner did not show probable cause that appellant was guilty of the crime of obtaining money by false pretenses—(1) under the law of Canada; and (23) under the law of Illinois.

Crim. Code of Canada, Sec. 404; R. S. Ill., Ch. 38, Section B 16, *post*, p. 67.

Jackson v. People, 122 Ill. 139, 149.

Moore v. People, 190 *id.* 333, 335.

IX.

The complaints and the competent evidence before the Commissioner did not show probable cause of the commission by appellant of the crime of embezzlement, or larceny or receiving of money, valuable securities or other property. Knowing the same to have been embezzled, stolen or fraudulently obtained.

ARGUMENT.

We recognize it as settled that "if the committing magistrate has jurisdiction of the subject-matter and of the accused, and the offense charged is within the treaty, and the magistrate has before him legal evidence on which to exercise his judgment as to the sufficiency of the facts to establish the criminality of the accused for the purposes of extradition, his decision cannot be reviewed on *habeas corpus*." (*McNamara v. Henkle*, 226 U. S. 520, 522, and cases cited. The questions to which we shall invite the court's attention are as we conceive all open for review under this rule, they are:

1. Did the United States Commissioner here have jurisdiction of the accused?
2. Were the respective offenses charged within the treaty?

3. Did the Commissioner have before him sufficient legal and competent evidence on which to exercise his judgment that the facts in evidence established the guilt of the accused the respective offenses charged?

In *habeas corpus* cases, where the treaty rights and obligations of the United States are involved, the court hearing the application will carefully inquire into any matter involving the legality of the detention and remand or discharge as the facts may require.

Henry v. Henkle, 235 U. S. 219, 228.

Where there is no provision of statute making an offense of the acts charged, the committing magistrate has no jurisdiction and the petitioner is entitled to his discharge.

Henry v. Henkel, 235 U. S. 219, 230.

I.

THE UNITED STATES COMMISSIONER DID NOT HAVE JURISDICTION OF THE PERSON OF THE APPELLANT.

The forcible arrest of Mr. Kelly, without warrant, and his detention, by police officers of Chicago upon telegraphic instructions from the Manitoban authorities, (*supra*, p. 2) were unlawful.

Ex parte Cohen, 8 Canadian Cr. Cas. 312.

Re Walter A. Dickey, *Id.* 318.

State v. Shelton, 79 N. C. 605, 607-8.

Malcolmson v. Scott, 56 Mich. 459.

Scott v. Eldridge, 154 Mass. 25.

It was not charged or supposed that Mr. Kelly had committed any violation of the laws of Illinois, for which he was thus arrested by Illinois officers. The arrest without warrant in Chicago was on account of some supposed violation of the criminal laws of Canada. But for this arrest there was not a shadow of authority. The sole authority for arresting in Illinois, a person charged with the commission of crime within the jurisdiction of a foreign government, is found in Section 5270 of the Revised Statutes of the United States, viz, upon a warrant issued upon a complaint made under oath before the United States Commissioner or other authorized judge or officer, as there prescribed. There is no

authority to arrest in any such case without such a warrant.

The Canadian authorities' call to the Chicago police was for his arrest and detention, not *per legem terrae*, but without the required warrant or complaint, because their telegram declared that "extradition proceedings will follow." (241.) The complaint made by the British Vice-Consul General before Commissioner Mason on October 2nd, when Mr. Kelly was brought there by the Chicago police officers who arrested him, was made upon his information and belief, based as he averred upon telegraphic communications from the Attorney General and police authorities of the Province of Manitoba, to the local authorities requesting the arrest of said Thomas Kelly. (295-296.)

The point of this is that the Canadian Government authorities who are seeking the extradition, were directly responsible for the unlawful arrest and are taking advantage of their own wrong.

The Chicago police officers, therefore, were not acting under any supposed authority of law in arresting and detaining the appellant or in taking him to the United States Commissioner's office and turning him over to the marshal, but as the agents of the demanding (Canadian or Manitoban) government or of its authorities who instigated such arrest and who are seeking his extradition. (Rec., 241, 243; *Supra*, p.) As well might the Manitoban Police Commissioner, McRae, himself have made the arrest and detention of appellant in Chicago, as have caused the Chicago police so to make it. The demanding government is here taking or seeking to take advantage of its own wrong.

The only lawful thing for the Chicago police officers to do with Mr. Kelly while they had him in custody was to set him at liberty, and not detain him or take him while in custody to the office of Commissioner Mason. *Hooper v. Lane*, 6 H. L. Cas. 443, at p. 549-551, per Lord Chancellor Cranworth. The Canadian prosecuting authorities were in no better position. The police officers taking him to Commissioner Mason's court was "just the same as bringing him into the Municipal Court" said officer O'Brien (247). They did not there set him at liberty any more than if they had brought and were holding him in the Municipal Court of Chicago upon a charge of local crime. They took him there so that as soon as the representative of the demanding government should make the complaint and the Commissioner's warrant should issue, they could, as they did, turn him over there to the United States Marshal. (243.) We say with entire respect that this was the method of caption for the extradition proceedings conceived and directed from Winnipeg, and carried out in accordance with the telegraphic instructions, from the prosecuting authorities of the demanding government. At no time after his arrest by the police on October 1st, was Mr. Kelly at liberty.

We maintain that the United States Commissioner or marshal, got no lawful jurisdiction of the person of appellant, and could not acquire jurisdiction by the unlawful action of the Chicago police in bringing him there, nor until he was first fully set at liberty, nor unless and until he should (while so at liberty and entirely free from the constraint of such

unlawful arrest), be arrested afresh by the marshal upon a valid warrant of the Commissioner.

Ex parte Cohen, 8 Canadian, Cr. Cas. 312.

Re Dickey, (No. 1) *Id.* 318.

Hooper v. Lane, 6 H. L. Cas. 443.

Mandaville v. Guernsey, 51 Barb. 99.

State v. Shelton, 79 N. C. 605, 607-8.

Malcolmson v. Scott, 56 Mich. 459.

Harris v. Louisville, &c. Ry., 35 Fed. 116.

The case of *Ex parte Cohen*, *supra*, is closely in point. There the prisoner had been arrested in Montreal without warrant, at the request by telegram of New York police authorities; and thereupon complaint was laid before an extradition commissioner and warrant issued and formal service by the proper officer upon the accused, and he was taken into custody under the warrant of the extradition commissioner. He thereupon sued out *habeas corpus* and was discharged on the ground that his arrest on such telegram and without warrant and his detention were unlawful.

In the leading case of *Hooper v. Lane*, *supra*, Lane brought an action on the case against Hooper, Sheriff, for failing to execute a writ of *ca. sa.* for 323d, 35, 4d against one Bacon. After defendant received plaintiff's writ of *ca. sa.* but before he had executed it, he received a writ of *capias ad respondendum* issued at the suit of one Arambura against Bacon, and arrested Bacon on that writ. The writ of *capias ad res.*, was a nullity for want of some required signature or stamp which had been omitted by inadvertence, and Bacon sued for his discharge from the arrest thereon and he was ordered to be

discharged by Coltman, J. The sheriff then claimed to hold and detain Bacon on the Lane writ of *ca sa*. Bacon sued for discharge therefrom and he was ordered discharged by the same judge. The question of the sheriff's liability to Lane turned upon the question whether the sheriff, having arrested Bacon on a void writ of *capias ad res*,—could hold and detain him upon Lane's valid writ of *ca sa*. The negative of this latter question was held by Lord Denman, who gave judgment for plaintiff. This was affirmed by the Court of Exchequer Chamber, and by the House of Lords. In the House of Lords, opinions in support of the judgment rendered were given by Justices Crowder, Williams, Creswell and Coleridge and the Lord Chancellor Lord Cranworth, and *contra* by Barons Bramwell and Martin and Justices Erle and Wightman.

The case turned upon fundamental questions of protecting the right of personal liberty and due process, and, we submit, applies here. It was not disputed by counsel for the plaintiffs in error in that case that the rule of decision would be correct in a case where the plaintiff in the valid writ was guilty of any wrong in the matter of the unlawful arrest such as causing the arrest without any writ, and he was taking advantage of his own wrong (p. 449, citing *Barlow v. Hall*, 2 Anstr. 461, and other cases), but contended that it was not applicable where the plaintiff in the writ or sheriff was not guilty of any wrong, as was the case there. And the positions of the judges whose judgments were in favor of reversal upon the question whether Bacon was in the lawful custody of the sheriff under the Lane writ when he was ordered discharged by Justice Coltman, viz:

(Bramwell, B., p. 459; Martin, B., pp. 491-492, 494-495; Erle, J., pp. 503-505; Wightman, J., pp. 526-527) were controlled or affected by the consideration that the plaintiff there was not in any fault and was entitled to the benefit of the arrest and that the sheriff was guilty of no wrong, and should not suffer from the erroneous order of Justice Coltman discharging the prisoner from detention under the Lane writ. "It would," said Mr. Justice Crowder (p. 477), "be a strange anomaly, and at variance with every principle of law, if a trespass which subjects the sheriff to an action for wrongfully depriving a man of his liberty, could enure as a lawful arrest or detainer for any purpose whatever."

The main question for decision was whether Bacon's detention by the sheriff on Lane's writ (which was in his hands) after his discharge on the void writ of Arambura, on which he had been unlawfully arrested, was lawful or unlawful. In holding that such detention was unlawful in a much more extreme case than this, where the unlawful arrest was brought about by no intentional wrong of the sheriff and without any action of the plaintiff, the court applies principles which apply *proprio vigore* to this case; and which as applied here would be in harmony with the views and judgment of minority judges in that great case.

Here the Canadian authorities having in charge the matter of appellant's extradition (and prosecution if he should be extradited) originated and directed his unlawful arrest and incarceration in Chicago of which illegal action they have since been and are seeking to get the advantage. They strenuously opposed and prevented bail. (297 to 299, 303-4.)

These unlawful methods were all unnecessary and uncalled for, because, as they well knew, appellant had been in Minnesota (where he had a summer home), openly and without any concealment for three months, and while there his counsel repeatedly offered the Canadian authorities to appear and respond to extradition proceedings as soon as they should be ready to proceed in Minnesota. (301-2.) It suited their purpose better, however, not to take such action in Minnesota where he could readily be found and would appear, but to trail him by detectives, and when he came to Chicago for a day to meet one of his counsel, one of such detectives speedily informed the Chicago police and pointed him out to the Chicago police officers (241-242), and he was unlawfully arrested and held by them pursuant to the directions from Winnipeg. So, we maintain, the authorities from Manitoba have caused this arrest in violation of law for and in aid of these extradition proceedings, and are here seeking to get the fruits of it in defeating this appeal and securing such extradition.

One fundamental principle of the law of personal liberty will be found running through the views of the judges who expressed themselves in *Hooper v. Lane*, and the other cases there cited, and that is they who are responsible for an illegal arrest can take no advantage of it, direct or indirect.

It is submitted that the case and question here are unlike the cases which are likely to be cited for appellee, and which are cited and relied upon by the Commissioner in his able opinion (277 to 279)—cases where the accused was brought within the jurisdiction of the state, whose criminal laws he had violated, from another state, by the unlawful use of force,

which would render the captor liable civilly or criminally (*e. g.*, the *Ker case*, 119 U. S. 437, and the *Pettibone case*, 203 U. S. 192). In such cases it has been held in those and other cases cited, that the fact of his wrongful abduction does not prevent his trial in the state in which he committed an offense. A similar case would be here presented if Mr. Kelly had been forcibly and unlawfully taken from the United States to Canada and was put upon his trial there and urged in defense in the Canadian court his unlawful caption and abduction. No right of his under the laws of Canada would have been violated by his wrongful arrest in a foreign state, and the unlawful act would not have been the act of the Canadian government. In the *Ker case* in the Supreme Court of Illinois (110 Ill. 627, at p. 637) that court was careful to point out that the State of Illinois, which was prosecuting him, had no part in or responsibility for Ker's forcible abduction from Peru to the United States.

But here, Mr. Kelly was in the United States and had been in Minnesota (where he had a summer home) for about three months, as was well known to the authorities of Manitoba. (298 to 301.) He was within and entitled to the protection of the Fourth, Fifth and Fourteenth Amendments.

Yick Wo v. Hopkins, 118 U. S. 356, 369.

Wong Wing v. U. S., 163 U. S. 238, 243.

This court, in the *Pettibone case*, stated the principle of the decision in those cases, speaking of the *Ker case*, (203 U. S. 208) :

“The principle upon which the judgment rested was that when a criminal is brought or is in fact within the jurisdiction and custody of a

state, charged with crime against its laws, the state may, *so far as the Constitution and laws of the United States are concerned*, proceed against him for that crime, and need not inquire as to the particular methods employed to bring him into the state."

And this court in those cases pointed out the distinction which exists between those cases and this case. Speaking in the *Ker case*, in which the point was raised on his trial under an indictment, this court said, and it is quoted by the court in the *Pettibone case*, 203 U. S. 208:

"The case does not stand, when the party is in court, and required to plead to an indictment, as it would have stood upon a writ of *habeas corpus* in California, or in states through which he was carried in the progress of the extradition, to test the authority by which he was held."

The appellant, Mr. Kelly, has sued out the writ of *habeas corpus* while he is still in this jurisdiction in which the process of law had been abused to deprive him of his liberty.

II.

AS TO THE PERJURY CHARGE.

1. The crime charged is not the treaty crime of perjury.

We have been detailed and precise in the preceding statement that it may be clear that Thomas Kelly has been ordered extradited to Canada on a proceeding in which he is charged with "Perjury" under the laws of Canada,—this alleged "Perjury" having been committed in Canada. It is not material that he is also charged with other crimes.

If the charge of perjury included in the mittimus and warrant through and by which he is held and extradited is wrongfully there,—the prisoner would not be benefited were his innocence of the other two charges against him made clear to a jury in Manitoba.

Therefore irrespective of his rights or his liability to extradition on these other charges if they had not been joined in the proceedings and in its final outcome with this accusation of perjury, he should be discharged on this writ if the extradition for which he was committed by the commissioner cannot be sustained for the crime of perjury.

The punishment of "Perjury" as defined by the laws of Canada, is fourteen years' imprisonment in a penitentiary. If the appellant petitioner is extradited to Canada on the warrant, now, it is to be presumed, actually issued by the Secretary of State, it is to be tried there for the offense of "perjury"—as that offense is defined by Canadian law. If found guilty he may be confined in the penitentiary for fourteen years. And he may be found guilty without the proof or accusation even that he is guilty of that which, as we contend, is an essential constituent of the crime of "Perjury" contemplated and described in the Treaties with Great Britain under which this extradition is sought.

If the word "Perjury" as used in the Treaty with Great Britain under which this extradition is demanded, means one dereliction from righteous conduct, the Dominion of Canada gains no right under that Treaty to secure the extradition of one of its citizens for another and different moral obliquity, by enacting that in the criminal jurisprudence of Cana-

da the word "Perjury" shall mean such other and different immoral act.

This proposition is axiomatic and self-proving. To deny it is to repudiate the fundamental basis of the law of contracts as well as that of all international law.

We contend that such an enactment concerning the meaning of the word "Perjury" is exactly what the Dominion of Canada has made in Section 170 of Chapter 146 of the Revised Statutes of Canada of 1906. "Perjury" by the common law and by the Statutes of Illinois and of the United States has a certain precise definition and description. By the Common Law as laid down in Coke's 3d Institute 167, and in numberless Crown cases (such for example as *R. v. Townsend*, 10 Cox 356), it is

"The taking wilfully of a false oath by any person who being lawfully sworn and required to depose or speak the truth in any judicial proceeding or trial, swears absolutely *in a matter material to the issue then pending.*" (Italics ours.)

By the Statutes of Illinois where Kelly was seized for extradition, in Sec. 225 of the Criminal Code of Illinois—(An Act to revise the law in relation to Criminal Jurisprudence, approved March 27, 1874), "Perjury" is thus defined:

"Every person having taken a lawful oath or made affirmation in any judicial proceeding or in any other matter where by law an oath or affirmation is required, who shall swear or affirm wilfully, corruptly and falsely *in a matter material to the issue or point in question*, or shall suborn any other person to swear or affirm, as aforesaid, shall be deemed guilty of perjury or subornation of perjury (as the case may be)

and shall be imprisoned in the penitentiary not less than one year nor more than fourteen years." (Italics ours.)

Section 125 of the Act of the Congress of the United States of March 4, 1909, revising the Penal Laws of the United States, is as follows:

"Whoever, having taken an oath before a competent tribunal, officer or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true shall wilfully and contrary to such oath state or subscribe *any material matter* which he does not believe to be true, is guilty of *perjury* and shall be fined not more than two thousand dollars and imprisoned not more than five years." (Italics ours.)

By the Common Law therefore, by the Statutes of Illinois, and by the Statutes of the United States, it is a complete defense to the crime charged as "Perjury" that the false statement under oath was not on a point material to the issue or matter pending before the body or person to whom the statement is made.

By the Statute of Canada (Sec. 170 of the Criminal Code of Canada of 1906, Printed Rec., 226):

"Perjury is an assertion as to a matter of fact, opinion, belief or knowledge made by a witness in a judicial proceeding as part of his evidence, upon oath or affirmation, whether said evidence is given in open court or by affidavit or otherwise, *and whether said evidence is material or not*, such assertion being known to said witness to be false and being intended by him to mislead the court, jury, or person holding the proceeding." (Italics ours.)

To establish a charge of "Perjury" in Canada, therefore, proof that the false assertion was material to the issue involved is not necessary, nor would proof that it was not so material be a defense.

This makes the offense against the laws of Canada, there denominated the crime of "Perjury," a totally different thing from the Crime of Perjury known to the Common Law and defined by the Statutes of Illinois and of the United States. Elaboration cannot render this clearer. An illustration or two may be suggested, however. Ethically all lying is wrong and injurious to society. If Canada choosing to recognize this in her statutes should decree that hereafter "Perjury" under her laws should be "a false assertion in a matter of fact, opinion, belief or knowledge whether or not upon oath or affirmation" would the ethical offense thus made a felony by the laws of Canada, be the crime of "Perjury" mentioned in the Treaty between Great Britain and the United States?

Calling two different things by the same name does not make them the same, and the omission of *any* essential element of the crime described in the Treaty makes a different thing of the resulting action as certainly as a chemical compound becomes something else when one constituent is abstracted.

Let us consider further what was described by the word "Perjury" in the Treaty with Great Britain under which this extradition is demanded.

It is the Webster-Ashburton Treaty so called of 1842, a part of Article X of which treaty is as follows:

"ARTICLE X. It is agreed that the United

States and Her Britannic Majesty shall, upon mutual requisitions by them or their Ministers, Officers, or authorities respectively made, deliver up to justice all persons who being charged with the crime of murder or assault with intent to commit murder or piracy or arson, or robbery, or forgery or the utterance of forged paper committed within the jurisdiction of either shall seek an asylum or shall be found within the territories of the other."

By a subsequent convention of 1889-1890 the provisions of this Tenth Article of the Treaty of 1842 were made applicable to certain other crimes than those mentioned in the Treaty of 1842. Among these other crimes are

"5. *Perjury or Subornation of Perjury.*"

Another crime to which the Treaty of 1842 was extended was "Fraud by a bailee, banker, agent, factor, trustee, or director or member or officer of any company."—But because "Fraud" was not a term of precision in the criminal law, and some frauds carried no criminal liability,—there were added to this mention of "Fraud," etc., the words "made criminal by the laws of both countries." No such phrase was added to the words "Perjury or Subornation of Perjury" because no such phrase was necessary. As the Solicitor General of the United States said in his Argument in *Wright v. Henkel*, 190 U. S. 40, p. 55, (a suggestion practically adopted by the court in its opinion, p. 60):

"The United States and England denote with especial accuracy the scope of the various major offenses. * * * No phrase was needed in the Treaty of 1889 to explain the crimes of murder, burglary, etc., nor to express the necessity of criminality in both countries. They are criminal in both countries without that."

The "etc." in this quotation peculiarly includes "Perjury." No phrase was needed in the Treaty of 1889 to explain the crime of "Perjury" nor to express the necessity of criminality in both countries. It is criminal in both countries. But the "Perjury" which is and was criminal in both countries was "Perjury" at the common law—not the present Canadian brand.

As late as 1911, the Parliament of the United Kingdom passed "An Act to consolidate and simplify the Law relating to Perjury and Kindred Offenses." (1 & 2 Geo. V, Chap. 6.) It did not adopt the enlarged and variant definition of Perjury which the Dominion Parliament had chosen to give to it,—first by implication merely and in ambiguous form in 1869, and then expressly in 1892, but retained the precise, fixed, universally known common law description of it.

Says that Act of British Parliament of 1911:

"If any person lawfully sworn as a witness or as an interpreter in a judicial proceeding wilfully makes *a statement material in that proceeding* which he knows to be false or does not believe to be true he shall be guilty of perjury."

This but restated the law as it had existed in England since criminal jurisprudence came into existence there.

It is true that in 1869 the Dominion Parliament of Canada passed an Act (Chapter 23 of 32 & 33 Victoria) the Preamble of which is:

"WHEREAS it is expedient to assimilate, amend and consolidate the Statute law respecting perjury in force in the several provinces of Quebec, Ontario, Nova Scotia and New Brunswick and

to extend the same as so consolidated to all Canada"—

and Section 7 of which is:

"All evidence and proof whatever, whether given or made orally or by or in any affidavit, affirmation, declaration, examination or deposition *shall be deemed and be taken to be material with respect to the liability of any person to be proceeded against and punished for wilful and corrupt perjury or subornation of perjury.*"

This was undoubtedly the introduction into Colonial British jurisprudence of the novelty of a new crime,—more expressly defined by the Criminal Code of Canada under the name of "Perjury," three years *after* the Treaty of 1889 between Great Britain and the United States hereinbefore mentioned was negotiated. This Section 7 was re-enacted or incorporated in the Perjury Act of the Revised Statutes of Canada (1886), Chapter 154, Sec. 5, but in 1892, the Criminal Law of Canada was codified and then by Section 145 of Chapter 29, 55 and 56 Victoria, Perjury was first expressly defined to be

"An assertion as a matter of fact, opinion, belief or knowledge made by a witness in a judicial proceeding as part of his evidence upon oath or affirmation whether such evidence is given in open court or by affidavit or otherwise *and whether such evidence is material or not*, such assertion being known to such witness to be false and being intended by him to mislead the court, jury or person holding the proceeding."

This Section of the Criminal Code of 1892 was carried forward in identical words into the Revised Criminal Code of 1906, hereinbefore quoted.

By these enactments by indirection in 1869 and

directly in 1892 the Dominion Parliament made a crime of that which had been before in Canada as it had been and now is in all other parts of the British Empire, domestic and colonial so far as we can discover, no crime, but at worst a moral dereliction only.

And to that new crime the Dominion Parliament gave the name of the well known crime of "Perjury."

But to suppose that Great Britain in 1889 intended to include this new crime then only by indirection as we have said, defined, by the use of a term describing the common law crime which at the seat of its government and throughout its colonial possessions elsewhere was alone known by that term, is to repudiate all the ordinary rules of the construction for contracts, great or small. If Great Britain had intended thus to extend the recognized meaning of the legal term "Perjury" she would have so indicated by additional phrasing. As the Treaty of 1889 qualifies "Piracy" by the addition of the words, "By the law of nations" and "Fraud by a bailee," etc., by the addition of the words, "made criminal by the laws of both countries,"—so it would have qualified "Perjury" by the words "at common law" or "as thus defined, etc."—making clear in one way or the other exactly what was meant, if it had not been intended, supposed, and assumed that the word "Perjury" would be given its common law time-recognized meaning.

Thus far our attention has only been directed to the meaning which Great Britain must be presumed to have placed on the word "Perjury" in making the convention. But the minds of the contracting parties must have met on the agreement. We must

assume they did meet, when the meeting point was the definition of an offense known to the common law and the statutes of both peoples for centuries. Can there be any doubt what the consentient construction of the term "Perjury" in the Treaty was? The Statutes of the United States, the Statutes of all the different States of the United States (see e. g. note to Eng. & Am. Ency. of Law, 2d Edition, Vol. 22, p. 686), the Common Law as it existed in Great Britain and in the Colonies on this side the water which became the United States, the Statutes of Great Britain after the criminal law as to false swearing was there codified or made statutory, the Statutes of the British dependencies with the exception of Canada (if the Statute of 1869 can be said to have made an exception), combining to give a certain meaning to the term, is it reasonable to suppose any other meaning was attributed to it by the United States in making the compact?

It was dealing directly with the government of a great central power with both self-governing colonies and Crown dependencies in all parts of the world. A single word is selected as the description of an extraditable crime. Is it not plain that the word must have been used in the sense and with the connotation it bore in the central power on the one hand and in the United States on the other, irrespective of the fact that one self-governing colony might have applied the term to a different act?

The Convention of 1889, then, made extraditable the offense known as Perjury in Great Britain itself and in the United States. No moral dereliction not made extraditable by the Treaties can be made

the basis of extradition proceedings because a colonial Parliament has seen fit to give it that name.

The means of carrying into effect the provisions of the Treaties,—the means which were invoked in the case at bar, are found in Section 5270 of the Revised Statutes of the United States. That section provides that the charge before the Commissioner, Judge or Justice, which authorizes an arrest of the person sought is to be of the commission of a *crime provided for by a treaty or convention* and the evidence which justifies a warrant for surrender must be sufficient to sustain the charge *under the provisions of the treaty or convention*.

Not only must the *Treaty* provide for extradition for the alleged crime,—in this case “*Perjury*” (not “*Perjury as defined by the Dominion Parliament*” but *Perjury at Common Law and by the Statutes of Great Britain and of the United States collectively and individually*), but there is an additional safeguard thrown by the law over the liberty of the stranger within the gates of a foreign country.

The crime for which extradition is to be made must be, whatever the language of the extradition treaties, considered a crime by both parties, that is, by the demanding and by the surrendering country. This, Mr. Chief Justice FULLER, voicing the unanimous opinion of this court in *Wright v. Henkel*, 190 U. S. 40, p. 58, declares in express words (*italics beings ours*):

“The *general principle of international law* is that in *all cases of extradition the act done on account of which extradition is demanded must be considered a crime by both parties, and as to the offense charged in this case*”—(*i. e., Fraud by a director of a Company*) “the treaty

of 1889 embodies that principle in terms. The offense must be 'made criminal by the laws of both countries.'"

This clinches and confirms our position taken concerning the meaning of the Treaty.

Whatever could by any stretch of construction be said concerning the meaning which the Governments of Great Britain and of the United States or either of them, or either of their representatives placed on the word "Perjury" in the Extradition Treaty of 1889, because of the existence of the Canadian Statutes, no claim can possibly be made that the United States or the State of Illinois, nor indeed any one of the states which constitute the United States, considers a *crime* the making a false statement under oath—unless that statement is material to the matter under investigation by the tribunal or body to whom the statement is made. An ethical or moral delinquency it may be. It undoubtedly is if "intended to mislead." But it is not a *crime* nor is it punishable under the laws of the United States or of the several states. Therefore it is not an extraditable offense.

It is no sufficient answer to our argument that this rendered unjustifiable the action of the Commissioner and should have caused the release of the petitioner on the *habeas corpus* proceedings in the case at bar,—to say that the Commissioner and the District Court might well have believed that the false statements complained of, *was* material to the matter under inquiry by the Committee of Public Accounts, etc., and therefore constituted "Perjury" not only under the laws of Canada but under those of England and of the United States and of Illinois. This

is the only answer made, however, and the only one possible. But it is not sound. The question is not whether on the mere preliminary and practically *ex parte* examination before the Commissioner of the United States, he thinks that there is *probable cause* for believing Kelly guilty of what would be perjury under our law, but whether he is to be extradited to stand trial on a charge in which he may be found guilty and sentenced to fourteen years' imprisonment,—without any proof at all and indeed with absolute disproof of that which is necessary to render him guilty of the offense named in the Treaty and in the warrant of extradition. That is precisely the situation which confronts Mr. Kelly if he is extradited. He may be possessed of and may offer irrefragable evidence of the immateriality of the false statements he is alleged to have made before the Committee on Accounts to the matter under investigation by it. The jury and judge may be convinced by it,—but his conviction for “Perjury” as defined by the Criminal Code of Canada may follow. If he is extradited it will be in order that he may be tried for the particular crime of perjury which is defined in the Canadian Statute, and which is not a crime in Illinois or in the United States. Such extradition is not within the treaty. It is quite inconceivable that because a man is extradited from the United States, the Courts of Canada in a trial for “Perjury” under their law, will or can compel proof to hold him guilty, additional to that which they would require had he never left Canada for the United States.

And thus, though trying him for an offense with the same name, the courts of Canada would be try-

ing him for a different offense from that for which he was extradited. Such a violation of the treaty is for this court to prevent by preventing the extradition.

For although such action is universally regarded as an unjustifiable violation of treaty obligations, it has by no means been universally held by the courts of Great Britain, Canada, or of the United States that the accused could derive any benefit from this fact—once that the surrendering government had been induced to give him up. This court did indeed so hold in 1886, in *United States v. Rauscher*, 119 U. S. 407. Mr. Justice Miller in that case delivered the opinion, able, exhaustive and convincing, and as we shall attempt to point out not without bearing on the case at bar. But this opinion itself furnished sufficient evidence that many courts of both countries and especially of Great Britain, regard the moral obligations of the treaties in this respect as matters for the executive departments of the Governments only to consider,—holding as The Chief Justice WAITE asserts in his dissenting opinion, that

“If either country should use its privileges under the treaty to obtain a surrender of a fugitive on the pretense of trying him for an offense for which extradition could be claimed, so as to try him for one which it could not, it might furnish just cause of complaint on the part of the country *which had been deceived*, but it would be a matter entirely for adjustment between the two countries and which could in no way enure to the benefit of the accused *except through the instrumentality of the government that had been induced to give him up.*”

In the case at bar it could not be said that the United States had been “deceived” or “induced,”

(if "induced" conveys any idea of false pretense) to give up Mr. Kelly. On the contrary on the representation made by the demanding government that the "Perjury" for which they wish to try the accused in Canada was the offense denominated "Perjury" in Canada, and was a different offense from the "Perjury" defined by the Common Law and the law of the United States, the United States would have deliberately given him up for such trial. He would naturally and properly, therefore, be tried only for "Perjury as defined in the Canadian Code"—although the Commissioner or the courts had been actuated in the order for the surrender by their *prima facie* or *ex parte* assumption of the existence of an essential element in the crime which would never come to a legal or judicial test anywhere. This cannot be the law of extradition. In the Rauscher case, *supra*, this court held that a man surrendered by Great Britain to the United States on a charge of murder would not be tried in this country on the charge of inflicting a cruel and unusual punishment on one of the crew of a vessel of which he was an officer, *although that punishment consisted of the identical acts proved in the extradition proceedings on the charge of murder.*

We do not contend that this case is on all fours with the one at bar, but there are remarks in Mr. Justice MILLER's opinion which may well be considered as very pertinent herein :

"It can hardly be supposed that a government which was under no treaty obligation nor any absolute obligation of public duty to seize a person who had found an asylum within its bosom and turn him over to another country for trial, would be willing to do this unless a case was made of

some specific offense of a character which justified the government in depriving the party of his asylum. It is unreasonable that the country of the asylum should be expected to deliver up such person to be dealt with by the demanding government without any limitations, implied or otherwise, upon its prosecution of the party. In exercising its discretion it might be very willing to deliver up offenders against such laws as were essential to the protection of life, liberty and person, while it would not be willing to do this on account of minor misdemeanors. * *

* Indeed the enumeration of offenses in most of these treaties and especially in the treaty now under consideration is so specific and marked by such a clear line in regard to the magnitude and importance of those offenses that it is impossible to give any other interpretation to it than that of the exclusion of the right of extradition for any others."

If the surrendering country would not be willing to extradite a person on account of the insignificance or unimportance of the crime charged, would it be more willing to do so when the person might be convicted and punished without proof that anything considered a crime at all in the surrendering country had been perpetrated?

Again Mr. Justice MILLER says (*italics ours*):

"As this right of transfer, the right to demand it,—*the obligation to grant it*, the proceedings under which it takes place, all show that it is for a limited and defined purpose that the transfer is made, it is impossible to conceive of the exercise of jurisdiction in such a case for any other purpose than that mentioned in the treaty and ascertained by the proceedings under which the party is extradited without an implication of fraud upon the right of the party extradited and *of bad faith to the country which permitted his extradition*. No such view of solemn public

treaties between the great nations of the earth can be sustained by a tribunal called upon to give judicial construction to them. * * *”

There is something more than an implication in this language that in the case at bar, it would be bad faith in this country to permit extradition of Kelly when it is certain that he not only might but certainly *would* be tried and perhaps convicted and imprisoned for an action not criminal in the United States.

Finally in the *Rauscher* case, Mr. Justice MILLER says (*italics ours*):

“If the party could be convicted on an indictment for inflicting cruel and unusual punishment where the grand jury would not have found an indictment for murder, the treaty could always be evaded by making a demand on account of the higher offense defined in the treaty and then only seeking a trial and conviction for the minor offense not found in the treaty. *We do not think the circumstance that the same evidence might be sufficient to convict for the minor offense which was produced before the committing magistrate to support the graver charge justifies this departure from the principles of the Treaty.*”

We see no escape from the conclusion that unless and until the Dominion of Canada changes her Criminal Code on the subject of Perjury and makes Perjury in Canada the crime known as Perjury in the United States and in the United Kingdom, or the United States changes its laws on the subject, no extradition from the United States to Canada under any treaty can be made for “Perjury” alleged to have been committed in Canada.

It is not necessary to consider the complement or obverse of the same question—whether there can be

properly be extradition from Canada to the United States for the alleged offense of "Perjury."

Without discussion it may be suggested, however, that absolute reciprocity is by no means necessary to just action under the Treaties.

If a man is extradited from the United States to Canada for "Perjury" he may be tried and convicted and punished there for what is no crime here, but if he is extradited from Canada to the United States, he can only be convicted and punished for that which is a crime and would render him punishable there.

We respectfully submit that for the reasons we have given the petitioner should have been discharged on the hearing of the writ of *habeas corpus*.

2. THE ALLEGED FALSE STATEMENT OF APPELLANT ON WHICH PERJURY IS CHARGED WAS NOT MADE UNDER A LAWFUL OATH.

The Public Accounts Committee was without power or authority to examine him on oath with respect to the matter testified about. Its entire power in that respect was conferred and limited by Section 35 of the Legislative Assembly Act and the resolution of the Legislative Assembly constituting and providing for its standing committees.

The Legislative Assembly Act, Section 35, introduced in evidence by complainant provides (Rec., 84-85):

35. Any select committee of the Legislative Assembly to which any private bill or other matter or cause has been referred by the House, may examine witnesses upon oath, upon matters relating to such bill, matter or cause, and for that purpose the chairman or any member of

such committee may administer an oath, in the form in this section contained, to any witness, as follows:

Form of oath:

The evidence you shall give to this committee touching (*the case to be mentioned here*) and which has been referred to this committee, shall be the truth, the whole truth and nothing but the truth. So help you God. R. S. M., c. 96, s. 38.

Resolution of the Legislative Assembly of February 9, 1915, under which the committee in question was appointed, provides (52):

Resolved, That the Select Standing Committees of this House for the present Session be appointed for the following purposes:

V. On Public Accounts:

Which said committees shall severally be empowered to examine and inquire into all such matters and things as may be referred to them by the House, and to report from time to time their observations and opinions thereon, with power to send for persons, papers and records, and to examine witnesses under oath.

The Public Accounts Committee had no power to examine appellant on oath unless the matter about which he was examined had been referred to that committee by the House.

Nothing appears in the proceedings of the Legislative Assembly (which were introduced before the Commissioner by defendant) showing any reference of the matter here in question to the Committee on Public Accounts. (50-77.) The deposition of Mr. Allen does not show any such fact. (89-90.) Nor was it shown by any other evidence.

It is settled that in order that false testimony should constitute perjury, the tribunal must have

had jurisdiction of the cause in which the oath was administered. *Pankey v. People*, 2 Scam. 80; *Maynard v. People*, 135 Ill. 416; *Hereford v. People*, 197 Ill. 222. That jurisdiction, under the evidence here, must be held to be lacking in that Committee.

Wherefore we contend there was no proof before the Commissioner tending to show that appellant was guilty of the crime of perjury.

III.

AS TO THE CHARGE OF OBTAINING MONEY BY FALSE PRETENSES.

Extradition may only be made under the treaty and laws upon such evidence of criminality as, according to the laws of the place where the person charged shall be found, would justify his apprehension and commitment for trial if the offense had been there committed.

We maintain that the complaint and the legal and competent evidence before the United States Commissioner respectively, did not warrant his holding and committing appellant for extradition.

The charge is that appellant between July 16, 1913, and January 1, 1915, did unlawfully obtain for the firm of Thomas Kelly & Sons, from the provincial officers of the Province of Manitoba, having the care, custody, control and disbursing of public funds, with intent to defraud his Majesty the King, in the right of said Province, the sum of \$1,250,000. But this is immediately limited by the specific averment that he obtained \$779,987 of the moneys of said province on account of pretended extra work done

and materials furnished in construction of caisson foundations for the new Parliament buildings at Winnipeg, upon false and fraudulent representations and statements that said firm put in and used certain respective amounts of reinforced concrete, lumber, and iron rings and bolts, and that the fair and reasonable values for said respective materials and for work were certain sums, the said Kelly then and there well knowing that he furnished only a smaller amount of less value, and that said moneys and other moneys were so obtained by said false pretenses and other false pretenses, with intent to defraud the King "in the right of the Province of Manitoba." (40-41.)

According to the evidence introduced, the supposed "representations" consisted of six contractors' "estimates,"—Exhibits 7 to 12 inclusive (145 to 147) to the deposition of McTavish, a clerk or "accountant" in the office of the Provincial Architect, and a witness (124-125), which he calls applications for payment which were made by Thomas Kelly & Sons for work done, and delivered to the architect. McTavish testifies that some of the applications were handed him by the Provincial Architect and the others by Lawrence C. Kelly (a son and partner of appellant), and that they were generally accompanied by a letter from said firm asking for payment, and that most of the letters were signed by Lawrence Kelly on behalf of the firm. (125.) None of the letters are produced. The Provincial Architect made certificates addressed to the Minister of Public Works each to the effect that Thomas Kelly & Sons were entitled to a payment of the sum of money therein stated (129-131); and on such certificates of

the architect, "orders in council" were passed upon which the payments were made to the firm of Thomas Kelly & Sons. (126.)

The Criminal Code of Canada, 1915, Section 404, defines false pretenses as follows:

"A false pretense is a representation, either by words or otherwise, of a matter of fact either present or past, which representation is known to the person making it to be false, and which is made with a fraudulent intent to induce the person to whom it is made to act upon such representation." (225.)

The Illinois Criminal Code (2 Jones & Add. Ill. Stat. Ann., page 2033, paragraph 3653; Hurd's Rev. Stat., Ch. 38, Sec. 96), provides:

"Whoever, with intent to cheat or defraud another designedly by color of any false token or writing, or by any false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money, personal property or other valuable thing, shall be fined,"
etc.

We contend that no case of obtaining money by false pretenses under either the Canadian law or the Illinois law is here presented.

Obviously the submission of such an "estimate" by a firm of contractors for the construction of a government building to the government architect, under whose charge and supervision and eyes, and to whose satisfaction the work was to be done, and whose inspectors were continuously on the work, was not done with the intent "to induce the person to whom it is made to act upon such representation" as to the amount and quality and price of the work referred to therein,—within the meaning of the Canadian statute.

We maintain that the essential quality of the crime of false pretenses in Illinois and at the common law is a deceiving and overreaching by false token or writing or pretense, which is quite lacking in and quite different from anything that any evidence here tends to show appellant or the firm of Thomas Kelly & Sons did. The distinction is obvious in the cases.

Here the evidence at most tends to show that the firm of Thomas Kelly & Sons, contractors, submitted to the Provincial Architect "estimates" with a view to receive payments on the work which estimates were greatly in excess of the amount or value of the work which at the time had been actually done. All of this was done while the contractors were still at work on the parliament buildings and the aggregate payments received, amounted to very much less than would be coming to them under the contracts for the work when completed. And so far as shown and presumably, these contractors (accepted for work of such magnitude) were financially responsible for its completion and for all of their obligations and liabilities, growing out of it. The work was done openly and publicly, under public and official supervision and inspection. The work was so going on for nearly two years. These contractors' estimates were delivered to the Architect so in charge of the work. None of them, so far as the evidence shows, were intended by the firm or by the contract for or went to the Minister of Public Works, or council or to any official other than the architect. The testimony of the Provincial Treasurer and the Provincial Auditor was that in every instance of these payments the necessary practice was followed that there should be a proper voucher coming from the defend-

ant authorizing the expenditure and properly certified by the officers of that department having charge of the expenditure, then passing through the auditor to the treasurer for payment. (118-119, 124.) The parties here, so far as inspecting, measuring and approving or rejecting the work and estimating and paying for it were concerned, were at arms' length. The governmental authorities having this in charge provided for and had their own adequate means of information.

It is submitted that there could have been no expectation or intent on the part of the firm of Thomas Kelly & Sons, that the architect or any one else would rely on, and there is no evidence that he did rely on these estimates as representations.

But to constitute this crime, the representation must be relied on, and must be reasonably calculated to deceive and must deceive.

Clark & Marshall, Crimes, 819.

Com. v. Strain, 10 Metc. 521, 522.

Simmons v. People, 187 Ill. 327, 330, 331.

All of that was lacking here.

In the case of *Jackson v. People*, 126 Ill. 139, 149, the Supreme Court adopts the definition of Bishop that "a false pretense is such a fraudulent representation of an existing or past fact by one who knows it not to be true as is adapted to induce the person to whom it is made, to part with something of value. (2 Bishop in Criminal Law 415.)" False pretenses are so defined in Bouvier's Law Dictionary. It must be such as to impose on a person of ordinary strength of mind. *Id.*

The definition contained in the Criminal Code of

Canada and that adopted by our Supreme Court in the Jackson case, differ in but one respect. Under the Jackson case the false pretense must be "adapted to induce the person to whom it is made, to part with something of value." We find no such requirement in the Canadian Code. Belief of the person defrauded in the truth of the representation is necessary in Illinois. *Moore v. People*, 190 Ill. 333, 335. The false pretenses must have had such influence that without their weight the owner would not have parted with his property. *Cowen v. People*, 14 Ill. 348, 350; *Comm. v. Drew*, 19 Pick. 183. It must deceive the person to whom it is made. Therefore it must be relied on by him and be a direct and proximate cause of his parting with his property. *Clark v. Marshall*, Crimes, p. 819. And in determining the criminality of the false pretenses used, it is necessary to consider the ability or incapacity and opportunity of the person to whom they were addressed to detect the falsehood. *Cowen v. People*, 14 Ill. 348, 350-351. All of these elements are here lacking.

The distinction between the supposed dereliction or offense for which the Canadian authorities are here seeking to secure and (if he is extradited) to try the appellant, and the crime of obtaining money by false pretenses under the Illinois law is illustrated by the cases which indicate the nature of the frauds that the Legislature of Illinois was undertaking to punish under the name of false pretenses. *Owen v. The People*, 14 Ill. 348, was selling a watch for a gold watch, worth \$125, when it was galvanized and worth only \$5. *Thomson v. The People*, 24 Ill. 60, involved getting a farm out of a weak-minded man for teaching him "eye and ear surgery" and taking him into

partnership, although the person pretending to do it had no knowledge of surgery or any such business as he pretended and did not intend to form a partnership. *Thomas v. People*, 113 Ill. 531, was an indictment for "conspiring to obtain goods by false pretenses." The accused got a grocery stock from a woman by pretending to convey to her lots to which they had no title. *Jackson v. The People*, 126 Ill. 139, involved a horse trade made by one of those fellows who put an advertisement in the paper that they have in a stable in the rear of a first-class house, a first-class horse which is to be sold only because the owner is going to Europe, etc., etc., and then palm off a doctored wind-broken, balky horse with the heaves. *Moore v. The People*, 190 Ill. 331, involved obtaining a loan on cattle which the accused represented that he owned but did not own. *People v. Weil* was an indictment for practicing "the confidence game"—a pretended bet on a horse race, as was *People v. Good-bent*, 248 Ill. 373.

It will be seen that these cases all involve a different sort of offense from that of which appellant is accused.

The sum of it is, the alleged offense to which the Canadian prosecutors have here given the name of obtaining money by false pretenses is shown by the complaint and evidence not to be anything of the kind. It is not the crime of that name mentioned in the treaty or in Illinois or at the common law.

The thought, of course, is not to be entertained that in an extradition case, treaty provisions might be strained so that a transaction or dereliction, even if illegal or criminal, which is not a treaty offense should be held to be within the treaty.

IV.

AS TO THE REMAINING OFFENSES CHARGED, OF STEALING LARCENY OR EMBEZZLEMENT, AND OF RECEIVING MONEYS, VALUABLE SECURITIES AND OTHER PROPERTY WHICH HAD THERETOFORE BEEN EMBEZZLED, STOLEN OR FRAUDULENTLY OBTAINED.

The complaints are insufficient. While so much fullness or particularity is not required as in indictments, the complaint must by its averments of fact show the elements of the crime. We maintain that is not the case here with the Canadian (161-162) or with the Chicago complaint. (41-42.)

The evidence does not tend to show stealing or theft under the definition in either country or at common law. In Canada there must be a taking "without color of right" of something capable of being stolen. (224.) In Illinois larceny is the feloniously stealing, taking and carrying away the personal goods of another.

Rev. Stat. Ill., Ch. 38, Sec. 167.

There was here averred or shown nothing like embezzlement. (*Supra*, pp. 21,22.)

The fact is that the complainant here confined his averments in his complaint to the last charge of receiving money, valuable securities or other property which had theretofore been embezzled, stolen or fraudulently received. This charge is phrased substantially as in the treaty. The nearest approach to this in the Canadian Criminal Code in the provisions introduced by complainant is found in Sections 399 and 400. (225.) Section 399 makes it an offense

for one to receive or retain in his possession anything obtained by any offense punishable or indictable, or by any acts wheresoever committed, which, if committed in Canada, would have constituted an offense punishable or indicted, knowing such thing to have been so obtained. (225.) Section 400 makes it an offense for a person to receive or retain in his possession anything, the stealing whereof is thereby declared to be an indictable offense, knowing the same to have been stolen. (225.) The Illinois statute provides as follows:

“Every person, who, for his own gain or to prevent the owner from again possessing his property, shall buy, receive or aid in concealing stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall be imprisoned,” etc. (R. S. Ill., Ch. 38, Sec. 239.)

None of these provisions are shown to be violated by the evidence here.

But the averment of the complaint here that the “money, valuable securities or other property” alleged to have been unlawfully received by the appellant “had theretofore been embezzled, stolen or fraudulently obtained,” is of the gist of the alleged offense. It will be observed of this essential ingredient of the crime.

(1) That the complaint does not aver or state (as it needs most in order to be sufficient) by whom such money, securities or property had been embezzled, stolen or fraudulently obtained, or from whom appellant received them; and (2) that the evidence does not tend to show that any such money or securities or other property was either received by this appel-

lant or had been theretofore embezzled, stolen or fraudulently obtained by anybody. This was an essential ingredient by the very terms of the charge.

It will be observed that the concluding averment of this Chicago complaint (41-42)—it was not in the Winnipeg complaint (161-162)—that by means of such false and fraudulent scheme, etc., the firm of Thomas Kelly & Sons fraudulently and feloniously obtained \$1,250,000 of the moneys of the Province of Manitoba contrary to the laws of the Province, etc., makes no averment of crime against the appellant.

We maintain that no case was made for appellant's extradition for these alleged offenses.

V.

We submit in conclusion that the United States Commissioner was without jurisdiction of the person of appellant, and that no case was presented before him as to any or either of said charges of jurisdiction to commit the appellant for extradition.

JOHN S. MILLER,
EDWARD OSGOOD BROWN,
PIERCE BUTLER,
For Appellant.

10
Office Supreme Court, U. S.

FILED

APR 1 1916

JAMES D. MAHER

CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1915.

No. 777

THOMAS KELLY,
Appellant.

VS.

ELVIN J. GRIFFIN, Jailer of Lake County,
Illinois, and JOHN J. BRADLEY, United
States Marshal for the Northern District
of Illinois, Eastern Division,

Appellees.

Appeal from the District
Court of the United States
for the Northern District
of Illinois, Eastern Divi-
sion.

—
Honorable K. M. Landis,
Judge Presiding.

BRIEF AND ARGUMENT FOR APPELLEES.

ALMON W. BULKLEY,
CLAIR E. MORE,
HENRY B. F. MACFARLAND,
*Attorneys for Appellees and
The Province of Manitoba.*



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IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1915.

No. 777

THOMAS KELLY,
Appellant.

7B.

ELVIN J. GRIFFIN, Jailer of Lake County,
Illinois, and JOHN J. BRADLEY, United
States Marshal for the Northern District
of Illinois, Eastern Division,

Appellees.

Appeal from the District
Court of the United States
for the Northern District
of Illinois, Eastern Divi-
sion.

—
Honorable K. M. Landis,
Judge Presiding.

BRIEF AND ARGUMENT FOR APPELLEES.

STATEMENT.

The crimes for which Thomas Kelly is sought to be extradited in this proceeding grow out of dealings between the said Thomas Kelly and the Government of the Province of Manitoba regarding the construction of the new parliament buildings of that province.

During the year 1912 the Government of the Province of Manitoba decided to erect new parliament buildings in the City of Winnipeg, according to plans furnished by Frank W. Simon, architect (Rec. 167). On the 26th of May, 1913, advertisement was made

for bids for the erection of said buildings according to the plans and specifications, these bids to be in by twelve o'clock noon of the 2nd day of July, 1913 (Rec. 179). The plans and specifications upon which bids were asked provided for a foundation of concrete piling and a superstructure of reinforced concrete. Two bids were put in, one by Peter Lyall & Sons, for \$2,863,000, and the other by Thomas Kelly & Sons, for \$3,200,000 which was withdrawn and on July 3rd another bid substituted for \$2,859,750 (Rec. 179), and a contract was entered into with Thomas Kelly & Sons on July 16, 1913, for the erection of the buildings for \$2,859,750 (Rec. 179). That contract was collusive. There was collusion between Thomas Kelly and Sir Rodmond Roblin, premier, and G. R. Coldwell, then acting minister of public works of the Province of Manitoba.

Prior to advertising for bids the officials had decided to change the concrete pile foundations to caissons (Rec. 168). This contemplated change was known by Kelly before he submitted his bid (Rec. 179), and with that change in view, Kelly had included an item in his bid of \$64,050 for the piling foundation called for in the original specifications (Rec. 179), although it is estimated that the value of a foundation constructed according to the original specifications would be \$196,154.32 (Rec. 189).

It appears also that Lyall & Sons' bid for \$2,863,000 was within the time stipulated in the advertisement; that for some reason an order was made by the premier extending the time for receiving bids until the next day; that Kelly took away the bid which he had produced for \$3,200,000 and

the next day put in a bid for \$2,859,750, thus showing that information had been communicated to him regarding the Lyall bid (testimony of Priestman, Rec. 171; Dancer, Rec. 164; Horwood, Rec. 179; Bowman, Rec. 189; Salt, Rec. 175).

Having decided previous to asking for bids to change the foundations from concrete piling to caissons, as soon as the original contract was executed in July, 1913, Kelly was permitted to start work upon the caissons without any agreement or contract or understanding other than with the architect, Horwood, that he would present bills at the rate of \$12 per cubic yard for reinforced concrete, and \$7 per cubic yard for excavating, \$40 per thousand feet for the lumber used, and 7c per pound for the iron rings and bolts (Rec. 180).

Those prices were excessive. Kelly presented bills on the basis of those prices (McTavish Exhibits 7, 8, 9, 10, 11 and 12, Rec. 102 to 105), for 35,993 cubic yards of reinforced concrete, the same amount for excavation, also for 1,213,000 feet of lumber used, and 797.5 tons of iron caisson rings and bolts, upon which statement he received \$779,987 exclusive of the \$64,050 included in his original contract for concrete piling (testimony of Fearnley, Rec. 177; and Fearnley Exhibits 2, 4, 5, 6, 7 and 17, Rec. 192, 193 and 195).

Russell, an architect, investigated these caissons put in by Kelly, and based upon that investigation, he calculated that the total cubic yards of material in the caissons was 21,327, making a liberal allowance to the contractors therein (Rec. 173).

The concrete was *not reinforced*; there was no uniformity in the quantities of the different materials used; *no crushed stone* was found in any of the samples taken from the caissons, and in none of the caissons were any lumber or iron rings found, except in the bottom of one and the top of another; (Rec. 174) that the value of the caissons at an outside figure was \$228,198.90, after allowing a reasonable profit to the contractor (Rec. 174). The lumber and iron rings used in the construction of the caissons were taken out when the caissons were completed, and used over and over again. Not more than 100,000 feet of lumber at an outside figure was used in the construction of the caissons, and not more than 40 tons of iron rings were used, and not more than one ton of iron rings was left in the caissons. There were 369 caissons in all (Rec. 174, 175).

The evidence shows that prior to the 1st of March, 1914, when the caissons had been completed, only 23,834 barrels of cement had been received by Thomas Kelly & Sons on the work (Rec. 173), and cement was used in other work than for the caissons. If it had been all used in the caissons at a barrel a yard, there could not have been more than 23,834 cubic yards; at a barrel and a half per yard, as required by the specifications there could not have been more than 15,890 cubic yards.

Paul Schioler, a civil engineer, estimates the value of the foundations if constructed according to the original plans, at \$196,154.32, and the value of a conservatively and properly designed caisson foundation at \$149,730, and that the change from piles to

caissons should have been made at a saving to the province of \$46,424.32 (Rec. 189). The \$779,987 was therefore all obtained by Kelly with the assistance of his criminal associates by fraud and false pretenses, without the province having received any value therefor. Other changes were also made in the plans and specifications, and contracts for large sums for *extras* entered into on account of such changes, which the evidence in this record shows were unnecessary and fraudulent and resulted in the firm of Thomas Kelly & Sons receiving large sums of public money without rendering value therefor.

On March 26, 1914, a contract was made for the sum of \$230,100 for the supposed *extra* expense of changing the superstructure of the north wing from reinforced concrete to a steel construction. On account of that contract Thomas Kelly & Sons received the sum of \$195,585 cash, being the contract price less 15 per cent, on the assumption that the contract had been completed and performed in full, and that there were no deductions to which the government was entitled (McTavish Exhibits 13, 14, 15, Rec. 212, 213 and 214; Priestman's Exhibits 8, 16 and 19, Rec. 192, 195 and 196; testimony of Priestman, Rec. 172; Fearnley, Rec. 177).

The work had not been done, and the material had not been erected as represented (Rec. 183). No deduction was made on account of the cost of the work as originally planned, and none intended (Rec. 183, 158).

It appears also from the evidence in the record that Kelly only paid \$67,000 for the steel used in this

contract, and \$1.50 per ton for painting it; that a fair price, including the contractor's profit, for supplying and erecting such steel would be \$92,312 (Lyall's testimony, Rec. 176), and this without giving any deduction whatever for the cost of the reinforced concrete construction provided for in his original contract.

Horwood says (Rec. 185), that all the steel contracts were padded at the request of Simpson and Kelly, and that there never was any intention on his part as an architect to make any deductions in respect to the additional contracts when the final estimates were being put through on the original contract; and that if he had done so the deductions might in some cases have amounted to more than the extra payments made.

On the 20th day of July, 1914, another contract for \$215,000 was made to cover the extra expense for caisson grillage, grillage beams and concrete. Under that contract Kelly received \$182,750, being the contract price less 15 per cent, on the assumption, representation and statement that the contract had been performed in full (McTavish Exhibits 16 and 17, Rec. 215 and 216; Priestman Exhibits 14 and 19, \$25,500 being included in the latter check). Kelly paid \$32,842 for this grillage steel, and it was worth 60 cents a ton to deliver, there being 656 tons (Rec. 172). As a matter of fact there was no grillage required for this building (Rec. 189), and the steel plans prepared in the office of the provincial architect showed about 350 tons of waste steel, as columns and beams built in heavy brick walls (Rec. 189).

Horwood says in making up the estimate for the south wing, for example, that he included an item of 20 per cent for rivets in order to make up the amount which had been agreed upon. Dr. Montague afterwards told him it was impossible to justify it, and Kelly had suggested that more steel should be added on the plans forming part of the contract (Rec. 185). No deduction was made on this contract on account of the original construction and none intended. The money obtained by Kelly on this contract was all wrongfully and fraudulently obtained.

There is also a considerable amount of evidence in this record regarding another contract for \$802,650 for steel work in the south wing, central portion and dome. The original plans and specifications provided for this superstructure to be reinforced concrete, and this was to be the cost of the change to steel construction. That contract was made early in July, 1914. There was no occasion for any contract at that time, as the dome could not be constructed for two years (Rec. 184).

Afterwards Kelly's associates in the fraud became panic stricken and undertook to destroy the evidence of this contract, and supposed they had destroyed all records and evidence of there being such a contract in existence. They, however, overlooked one of the outstanding copies, and it was left intact. With reference to there being such a contract, and the attempt to destroy all evidence regarding it, see testimony of Dancer, Rec. 164; Winters, Rec. 166; Wilson, Rec. 186; MacLean, Rec. 187 and 188; Horwood, Rec. 184.

No money was obtained under that contract inasmuch as the expose' occurred prior to the time it materialized.

Summarizing the amounts for *extras*, therefore, we have \$779,987 extra cost for change in the foundations, \$230,100 for extra cost for steel in the north wing, \$215,000 for cost because of grillage steel for the south wing and central portion, and then the parties to round out the matter proposed an extra charge of \$802,750 to make the change from reinforced concrete construction in the south wing and central portion above the grillage and the dome; these four amounts aggregating \$2,027,737, all being on account of extra work on the contract for \$2,859,750 for *two* changes from *concrete piling* to *caissons* for the foundations, and from *reinforced concrete* to *steel construction* for the *superstructure*, which two changes Mr. Schioler says should have been made not only without expense to the government, but at a reduction of \$14,492.32 (Rec. 189).

Kelly's firm actually obtained public moneys on account of these transactions for the caissons \$779,987, on account of the \$230,100 contract \$195,585, on account of the \$215,000 contract \$182,750, or a total of \$1,158,322 on account of these *extras* exclusive of other extras and what he received for work done by him under his original contract, without any deduction being made on account of the original contract price.

The Legislative Assembly of Manitoba met on the 9th of February, 1915 (Rec. 50). At that session of the legislature inquiries were made of the proper officials regarding the construction of the new par-

liament buildings and all matters concerned therewith, and orders were made by the House for returns by such officials, showing what had been done regarding those matters (Rec. 57 and 58). The usual select standing committees were appointed by that legislature, including the committee on public accounts (Rec. 52 and 68), whose duty it was to examine and inquire into the public accounts of the province for the year preceding (Rec. 90).

That committee met and began to investigate the payments made to Thomas Kelly & Sons on the building contracts (Rec. 181). Among others, Kelly was called before that committee on the 26th day of March, 1915, and testified, the evidence shows, falsely, regarding the composition of the concrete in the caissons (Rec. 94 and 95).

Horwood, the architect, was also examined before that committee and questioned about the payment for the caissons (Rec. 181). It seems the books with reference to the caissons had been kept by one William Salt, and for the purpose of endeavoring to justify themselves, Horwood and Coldwell first endeavored to get Salt to make a new book, and afterwards to change the figures in his original book, and then finally when he refused to do either of these, bribed him to take a vacation and leave the jurisdiction. Salt left. The legislature prorogued on the 1st day of April, 1915, the House being assured by Premier Rodmond Roblin that a royal commission would be appointed to investigate the parliament building contracts, the opposition in the House having petitioned the lieutenant governor to appoint such a commission (Rec. 182). Such a com-

mission was afterwards appointed by the Lieutenant Governor and investigated the matters in question at great length. Salt was bribed to stay out of Manitoba not only during the session of the Legislative Assembly, but afterwards while the Royal Commission was investigating. (See testimony of Salt, Rec. 175 and 176; Whitla, Rec. 165 and 166; Horwood, Rec. 181 to 183.)

The evidence clearly tends to show that the premier, Sir Rodmond Roblin, the minister of public works, G. R. Coldwell, and subsequently Dr. Montague, the architect, Victor R. Horwood, and subsequently the Attorney General, Howden, and Elliott, chief inspector, were all in collusion with Thomas Kelly & Sons to wrongfully obtain public moneys, and that Dr. Simpson was the political clearing house (Rec. 181).

Prosecutions were commenced against these parties in Canada, but Kelly had left the jurisdiction and was afterwards found in the United States; hence this proceeding.

(The opinion of the commissioner before whom the cause was heard is found in the record at pages 276 to 286). (For the information of the court we also attach to this brief a copy of the opinion of the learned judge who heard the case in the court below, delivered orally from the bench in deciding the case.)

ARGUMENT.

Before taking up for discussion the several questions urged upon the court by the learned counsel for appellant as grounds for the appellant's release from custody, we desire to call attention to some well settled general propositions applicable to cases of this character:

I.

THE TREATY.

An extradition case like this involves the question of the performance of a contract—a treaty between two nations.

By article X of the Webster-Ashburton Treaty of 1842, with Great Britain, it is provided:

“It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them, or their ministers, officers, or authorities, respectfully made, *deliver up to justice all persons* who, being *charged* with the crime of murder, or, assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum, or shall be found, within the territories of the other; *provided that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there*

been committed; and the respective judges and other magistrates of the two governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition, and received the fugitive." (Italics ours.)

U. S. Statutes at Large, Vol. 8, p. 576.

On July 12, 1889, a supplementary treaty, known as the Blaine-Pauncefote Treaty, was made between the United States and Great Britain, by article 1, of which, the provisions of article X of the Webster-Ashburton aforesaid, were made applicable to the following additional crimes:

1. Manslaughter, when voluntary.
2. Counterfeiting, or uttering counterfeit money.
3. *Embezzlement, larceny: receiving any money, valuable security or other property, knowing the same to have been embezzled, stolen or fraudulently obtained.*
4. Fraud by bailee, banker, agent, factor, trustee, or director or member or officer of any company, made criminal by the laws of both countries.
5. *Perjury, or subornation of perjury.*

6. Rape: abduction; child-stealing; kidnapping.
7. Burglary; house-breaking or shop-breaking.
8. Piracy by the law of nations.
9. Revolt or conspiracy to revolt on board ships on the high seas, etc.
10. Crimes and offenses against the laws of both countries for the suppression of slavery and slave-trading.

The article then provides:

“Extradition is also to take place for participation in any of the crimes mentioned in this convention or in the aforesaid Tenth Article, provided such participation be punishable by the laws of both countries.”

U. S. Statutes at Large, Vol. 26, p. 1508.

On December 13, 1900, a supplementary treaty was entered into, extending the provisions of the convention of July 12, 1889, to three additional crimes, viz.:

11. *Obtaining money, valuable securities or other property by false pretenses.*
12. Wilful and unlawful destruction or obstruction of railroads which endangers human life.
13. Procuring abortion.

U. S. Statutes at Large, Vol. 32, Part 2, p. 1864.

These treaties include the crimes of which appellant Kelly is charged.

A treaty of this character is executory, and the duty to perform the contract by the government when properly invoked is imposed upon the *execu-*

tive, and not the *judicial* department of the government.

Mr. Chief Justice Fuller, in delivering the opinion of this court in *Terlinden v. Ames*, 184 U. S. 270-288, said:

“Treaties of extradition are executory in their character, and fall within the rule laid down by Mr. Chief Justice Marshall in *Foster v. Neilson*, 2 Pet. 253, 314, thus: ‘Our constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provision. But when the terms of the stipulation import a contract, when either of the parties engages to perform a particular act, the treaty addresses itself to the political, not the judicial department.’ ”

The terms of the treaties in question import a contract by which each party engages to *deliver up to justice persons charged with crimes* specified in the jurisdiction of the other party. Congress has by appropriate legislation provided the method of procedure to be followed by the executive department of the government in performing and executing obligations imposed upon the government by the treaty.

U. S. Revised Statutes, Sec. 5270.

Section 5270 contemplates:

(a) A complaint under oath to a duly authorized magistrate, charging the person sought with having committed within the jurisdiction of the demanding government some one or more of the crimes provided by the treaty.

(b) The issue of a warrant and the apprehension of the person charged, and bringing him before the magistrate to hear evidence of criminality.

(c) If upon the hearing he deems the evidence sufficient "to sustain the charge under the provisions of the proper treaty, or convention, he shall certify the same, together with a copy of all the testimony taken before him to the secretary of state, that a warrant may issue upon the requisition of the proper authorities of such foreign government for the surrender of such person, according to the stipulation under such treaty or convention."

The certificate of the magistrate with a copy of all the evidence before him goes to the state department to be passed upon by that department, and it is the duty of that department to determine the duty of the government with reference to the performance of the contract.

If, therefore, the commissioner had jurisdiction, and the proceedings before him and the Secretary of State, were regularly and constitutionally taken under the acts of congress, the judicial department of the government will not interfere by writs of *habeas corpus*.

As MR. CHIEF JUSTICE FULLER said in the case of *Terlinden v. Ames*, at page 290:

"The decisions of the executive department in matters of extradition, within its own sphere, and in accordance with the constitution, are not open to judicial revision, and it results that where proceedings for extradition, regularly and constitutionally taken under the acts of congress, are pending, they cannot be put an end to by writs of *habeas corpus*."

II.

HABEAS CORPUS AS APPLIED TO EXTRADITION PROCEEDINGS.

The sole office of a writ of *habeas corpus* is to determine whether the prisoner is lawfully detained in custody. As said by Mr. Justice Gray, in the case of *Nishimura Ekiu v. United States*, 142 U. S. 651, 662:

“A writ of *habeas corpus* is not like an action to recover damages for an unlawful arrest or commitment, but its object is to ascertain whether the prisoner can lawfully be detained in custody; and if sufficient ground for his detention by the government is shown, he is not to be discharged for defects in the original arrest or commitment.”

In this proceeding Thomas Kelly must either be released from custody or held for extradition. If the Canadian government is entitled under the treaty to the extradition of Thomas Kelly on *any one* of the charges, it necessarily follows that under the terms of the treaty he must be surrendered. The settled rule of this court in extradition proceedings is, that if the committing magistrate has *jurisdiction* of the *subject-matter* and of *the accused*, and the *offense charged* is within the terms of the *treaty* of extradition, and the magistrate in arriving at a decision to hold the accused has before him *competent legal evidence* on which to exercise his judgment as to whether the facts are sufficient to establish the criminality of the accused for the purposes of extradition, such decision cannot be reviewed on *habeas corpus*.

Terlinden v. Ames, 184 U. S. 270, 278.

Ornelas v. Ruiz, 161 U. S. 502, 508.

Bryant v. United States, 167 U. S. 104.

Yordi v. Nolte, 215 U. S. 227.

Nishimura Ekiu v. United States, 142 U. S. 651, 652.

McNamara v. Henkel, 226 U. S. 520.

Grin v. Shine, 187 U. S. 181.

Ex parte Yarbrough, 110 U. S. 651, 653.

MR. JUSTICE BROWN said in delivering the opinion of this court in *Bryant v. United States*, 167 U. S. 104:

“The question before the commissioner in this case was whether, in the language of the Treaty of 1842, article X, 8 Stat. 572, 576, there was ‘such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offense had been there committed.’ In other words, whether, according to our laws, there was probable cause to believe him guilty of the crimes charged. Rev. Stat. Sec. 5270; *Benson v. McMahon*, 127 U. S. 457, 462. The question before us is even narrower than that, viz: Whether there was *any legal evidence* at all upon which the commissioner could decide that there was evidence *sufficient* to justify his commitment for extradition; or, as stated in *Ornelas v. Ruiz*, 161 U. S. 502, 508: ‘If the committing magistrate has jurisdiction of the subject-matter and of the accused, and the offense charged is within the terms of the treaty of extradition, and the magistrate in arriving at a decision to hold the accused has before him competent legal evidence on which to exercise his judgment as to whether the facts are sufficient to establish the criminality of the accused for the purposes of extradition, such decision

cannot be reviewed on *habeas corpus*.' See, also, *In re Oteiza*, 136 U. S. 330."

Keeping these general features in mind regarding the nature and character of the proceeding in question, and the limit and scope of inquiry under a writ of *habeas corpus*, let us examine the particular questions urged by the learned counsel for appellant as a basis for appellant's release.

III.

AS TO THE JURISDICTION OF THE PERSON OF APPELLANT.

It is contended by the learned counsel for appellant that United States Commissioner Mason never obtained lawful jurisdiction of the person of Kelly under the complaint and warrant in this cause, because he had been previously illegally arrested and held until the warrant in this proceeding was issued and served.

The theory is that because the original arrest of Kelly was illegal, and his unlawful detention was continued into and merged in the detention under the warrant in this cause without his being discharged from the illegal detention, that it taints the present warrant with the same illegality. The theory leads to this, that Kelly being in custody under an illegal warrant must be discharged and given an opportunity to escape before he can be arrested, or detained under a lawful warrant, and that if he is not given such opportunity, the magistrate obtains no jurisdiction of his person.

In the first place, it is *not conceded* that the arrest by Lieutenant Larkin was unlawful or unwar-

ranted, or that the detention of Kelly under the warrant issued by the commissioner on the complaint of the Vice-Consul was illegal or void.

Those proceedings were perfectly legitimate to apprehend a *fugitive from justice*. It must be remembered that Kelly is not a citizen of the United States, and does not have all the privileges of one. He is an *alien*, charged with being a *fugitive from the justice of his own country*, and had the authorized officials of the government known of the charges against him, he would not have been permitted to enter this country.

McRAE, who sent the telegram (Rec. 241), to the chief of police of Chicago, requesting him to hold Kelly for extradition proceedings, was commissioner of police of Manitoba, and then had in his possession warrants issued by the Canadian magistrate for the apprehension of Kelly for the crimes charged (Rec. 34). The next morning after his arrest by the Chicago police, he was turned over to the United States marshal upon a warrant issued by United States Commissioner M^{on}, upon the complaint of the British Vice-Consul (Rec. 21, 295). Certainly, the warrant issued by the commissioner on the complaint of the Vice-Consul was *not void* and without warrant of law, even though hurriedly and inartistically drawn, and based upon such information as the vice-consul then had. It was sufficient to give the commissioner jurisdiction to issue the warrant.

CHIEF JUSTICE FULLER, in delivering the opinion of this court in *Yordi v. Nolte*, 215 U. S. 227, said at page 230, quoting from the opinion of Judge Coxe:

“The general doctrine in respect of extradition complaints is well settled by Judge Coxe in *Ex parte Sternaman*, 77 Fed. Rep. 595, 597, as follows: ‘The complaint should set forth clearly and briefly the offense charged. It need not be drawn with the formal precision of an indictment. If it be sufficiently explicit to inform the accused person of the precise nature of the charge against him it is sufficient. The extreme technicality with which these proceedings were formerly conducted has given place to a more liberal practice, the object being to reach a correct decision upon the main question—is there reasonable cause to believe that a crime has been committed? The complaint may, in some instances, be upon information and belief. The exigencies may be such that the criminal may escape punishment unless he is promptly apprehended by the representatives of the country whose law he has violated. From the very nature of the case it may often happen that such representative can have no personal knowledge of the crime. If the offense be one of the treaty crimes, and if it be stated clearly and explicitly so that the accused knows exactly what the charge is, the complaint is sufficient to authorize the commissioner to act. (Citing a large number of cases.)’”

But *assuming* for the sake of the argument that his arrest and detention up to the time of the issuing of the warrant on the complaint, on October 15, 1915, upon which the present proceedings are based were unlawful and would have entitled him to discharge upon a writ of *habeas corpus*, what possible bearing has that fact upon the question as to whether he is *now* lawfully restrained of his liberty?

Since that time a hearing has been had before a magistrate authorized to conduct such a hearing,

and on evidence submitted *he has been judicially determined to be a fugitive from the justice of his country*, and that the crimes which he has committed are within the treaties of extradition which compel this government to surrender him to the Canadian authorities, and he is now detained and imprisoned to await the action of the Secretary of State. The question here in this proceeding is whether he is legally restrained of his liberty *now*. *How* the marshal obtained possession of his person, and *how* the commissioner obtained jurisdiction of his person is absolutely immaterial. The commissioner *did* have the appellant before him, heard the evidence and arguments of counsel, duly considered them, and rendered his decision thereon and certified the same with the evidence, to the Secretary of State, and at the same time issued a mittimus, under which appellant was held pending the action of the Secretary of State. (Opinion of commissioner, Rec. 276 to 286; mittimus, 287 to 289; certificate to secretary of state, Rec. 30, 31.)

The practice followed in this case of dismissing a *provisional* complaint and warrant when documents and depositions giving the details had arrived, so that a more definite and specific complaint could be made, was the same procedure as was followed in the case of *Wright v. Henkle*, 190 U. S. 40. Wright was sought by Great Britain for committing frauds as a director of a company in the City of London, and a warrant was issued for his apprehension upon a complaint signed by His Britannic Majesty's Consul General at New York, which alleged that his information and belief were based upon messages re-

ceived by cable from His Majesty's Secretary of State for Foreign Affairs. Wright sued out a writ of *habeas corpus* in which he claimed that no facts were set forth showing that petitioner had been guilty of any offense, that he had objected to the continuance of the proceedings but had been overruled and proceedings adjourned until March 30th. In his petition he prayed for writs of *habeas corpus* and *certiorari* and claimed that he was deprived of his liberty *without due process of law*. He also sought bail, which was denied. The writs prayed for were granted and after hearing dismissed and the case appealed to this court. On the argument it appeared that on March 31st a *new complaint* had been made which reiterated the original charge with some amplification, and further stated that the deponent's information and belief were based upon a certain copy of a warrant issued by one of His Majesty's justices of the peace for the City of London for the apprehension of said Whitaker Wright for the offense alleged, and a certain copy of the information and complaint and depositions upon which the warrant was granted; that upon this complaint the warrant was issued and the accused arraigned before the commissioner, and it was thereupon stated that the demanding government would *abandon* all further proceedings under the complaint of March 16th.

That was the procedure followed in this case (Rec. 32 and 33).

While it does not appear that this court from its opinion in the *Wright* case discussed this question, it was one of the points made by counsel who argued

the case for the British consul general, and who cited in support of the proposition that the appellant was not entitled to be discharged from custody by reason of the insufficiency of the complaint before the court, a new complaint having been made remedying the defects in the first complaint—

Nishimura Ekiu v. United States, 142 U. S. 651.

Iasigi v. Van De Carr, 166 U. S. 391.

and that the arrest on the second warrant was not illegal.

In re McDonald, 11 Blatch. 170.

In the *Nishimura Ekiu v. United States* case, the court said:

“If sufficient ground for his detention by the government is shown, he is not to be discharged for defects in the original arrest or commitment.”

In *Iasigi v. Van De Carr*, 166 U. S. 391, a petition for writ of *habeas corpus* was filed on the 18th day of February to procure the release of Iasigi, who was *charged* in New York with being a *fugitive* from the justice of the State of Massachusetts, the petition averring that he was the consul general of the Sultan of Turkey and that only the federal courts had jurisdiction. A hearing was not had until the 12th of March when the petition was dismissed and petitioner appealed. On the argument in the Supreme Court it appeared from the communication from the assistant secretary of state, under date of March 19th, that Iasigi had been removed from his consular office on the 9th of March, so that at the time when the order *remanding* Iasigi to custody

was entered he was not holding a consular office. MR. CHIEF JUSTICE FULLER, speaking for this court, said:

“As under section 761 of the Revised Statutes it is the duty of the court, justice or judge granting the writ, on hearing, ‘to dispose of the party as law and justice require,’ the question at once arises whether the order of the District Court dismissing the writ should be reversed, and petitioner absolutely discharged, because the objection existed when the writ issued, although it did not when the order was entered, even if such an objection were ever tenable, which we do not intend in the slightest degree to intimate it could be. If the application for the writ had been made on the 12th of March, it could not have been awarded, on the ground alleged in this petition, and as, on that day, the petitioner could not have been discharged on that ground, in accordance with the principles of law and justice, we are unable to hold that the order of the District Court was erroneous.”

In *Kelly v. Thomas*, 81 Mass. 192, a prisoner in the custody of the sheriff who sued out a writ of *habeas corpus* on the ground of the insufficiency of the warrant on which he was committed, was remanded because, prior to the hearing, the sheriff had received an *amended* and *sufficient warrant* of commitment upon the same sentence and thereupon asked and obtained leave to amend his return accordingly.

In *Pettibone v. Nichols*, 203 U. S. 192, the question was whether the petitioner was entitled to be discharged because he was taken from Colorado to Idaho to be there tried on a charge of murder by reason of a conspiracy between the officials of the

two states to get him out of Colorado without giving him an opportunity to contest the charge that he was a fugitive from justice. The court held, as it did in *Mahon v. Justice*, 127 U. S. 712, and *Ker v. Illinois*, 119 U. S. 437, that it was immaterial how he came within the jurisdiction of the court.

For similar reasons we submit that it was absolutely immaterial how Kelly came within the jurisdiction of the commissioner, and that his arrest and detention prior to his apprehension under the warrant of October 15, 1915, whether legal or illegal, is absolutely immaterial in this proceeding.

IV.

AS TO THE PERJURY CHARGED NOT BEING THE TREATY CRIME OF PERJURY.

It is contended by the learned counsel for appellant that the extraditable crime of perjury mentioned in the treaty is not charged or shown by the evidence.

(a) Because it is thought that the Canadian Criminal Code defining perjury is broader than the Illinois or the Federal statutes, and makes that perjury which is not perjury by the Illinois or Federal statutes, or by the common law or statutes of Great Britain.

(b) Because it is asserted that there is nothing in the record showing that the subject matter of the inquiry before the *public accounts committee* was properly before that committee so as to give it the necessary authority to examine Kelly under oath.

From which, counsel deduce the conclusion that under the treaty in question there can be *no extradition* from the United States to Canada *for the crime of perjury*. And therefore, he draws the further conclusion that appellant should be released notwithstanding Canada is entitled to have extradition on the other two charges.

The argument is unsound, and his deductions untenable for several reasons:

(a) *As to the Canadian Criminal Code.*

1st. The question before this court does not depend upon whether Canada has enlarged the definition of perjury so as to make that perjury which is not perjury here, but whether the *particular perjury* charged and shown by this record comes within the terms of the treaty.

If this *particular perjury* upon which appellant is sought to be extradited comes within the terms of the treaty, it is not material that Canada by her Criminal Code includes other false oaths under the name of perjury.

The treaty provides that surrender shall be made only "upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found would justify his apprehension and commitment for trial if the crime or offense had there been committed."

Is the complaint and evidence in this record sufficient to show that there is probable cause to believe Kelly guilty of the crime of *perjury*, and sufficient for an *examining magistrate* to commit him for trial if the crime had been committed here? If Kelly had been called before a duly authorized committee of

the General Assembly of Illinois, or a duly authorized committee of the Congress of the United States, charged with the duty of investigating public accounts regarding the construction of a public building of which Kelly was the building contractor and he had testified as he did, would an examining magistrate been warranted in committing him for trial on the charge of perjury?

It is not disputed but that the testimony which he gave was *material* and *intended to deceive the committee, and that it was false*. Those two facts cannot be denied under the evidence in this record. What the Canadian law may be except as it applies to the *particular perjury* here charged, or what the procedure in Canada may be, is not material here in this proceeding. It was not even necessary to show here that any warrant had been issued in Canada for the apprehension of Kelly on the charge of perjury.

In the case of *Grin v. Shine*, 187 U. S. 181, this court, speaking through MR. JUSTICE BROWN, said (*italics ours*):

“The treaty is undoubtedly obligatory upon both powers, and, if congress should prescribe additional formalities than those required by the treaty, it might become the subject of complaint by the Russian government and of further negotiations. But notwithstanding such treaty, congress has a perfect right to provide for the extradition of criminals in its own way, *with or without a treaty to that effect*, and to declare that foreign criminals shall be surrendered upon such proofs of criminality as it may judge sufficient. *Castro v. De Uriarte*, 16 Fed. Rep. 93. This appears to have been the object of Sec. 5270, which is applicable to all foreign

governments with which we have treaties of extradition. The requirements of that section, as already observed, are simply *a complaint under oath, a warrant of arrest evidence of criminality sufficient to sustain the charge under the provisions of the proper treaty or convention, a certificate by the magistrate of such evidence and his conclusions thereon*, to the secretary of state. As no mention is here made of a *warrant of arrest*, or other equivalent document, issued by a foreign magistrate, we do not see the necessity of its production. This is *one* of the requirements of the treaty which congress has intentionally waived. Moore on Extradition, Sec. 70."

All these necessary steps have been taken in this case. The sufficiency of the evidence to establish the criminality of the accused cannot be reviewed upon *habeas corpus*.

Grin v. Shine, 187 U. S. 181.

In re Luis Oteiza, 136 U. S. 330.

The only question on *habeas corpus* is whether there was *any* legal evidence against the prisoner upon which the commissioner was authorized to act.

Bryant v. United States, 167 U. S. 104.

In the case of *Benson v. McMahon*, 127 U. S. 457, it was contended there *was not any legal evidence of forgery* inasmuch as the alleged forgery was of theatre tickets, which were entirely printed in the name of Mr. Abbey, and there was not found any writing upon them. Mr. Justice Miller, in delivering the opinion of this court, said, at page 463:

"We are not sitting in this court on the trial of the prisoner, with power to pronounce him guilty and punish him or declare him innocent and acquit him. We are now engaged simply in

an inquiry as to whether, under the construction of the act of congress and the treaty entered into between this country and Mexico, there was legal evidence before the commissioner to justify him in exercising his power to commit the person accused to custody to await the requisition of the Mexican government."

Substitute Great Britain for Mexico, and the language will equally apply here.

After reviewing the evidence, Mr. Justice Miller continued, at page 466:

"It is for an offense against Mexican law that the prisoner is held to answer. As he is not now upon final trial, but the only question is whether he has committed an offense for which, according to this treaty, he should be extradited to that country and there tried, we do not see that in this application to set the prisoner at large, after he has been once committed by an examining court having competent authority, and after having been held to answer in Mexico for the offense charged, this court is bound to examine with very critical accuracy into the question as to whether or not the act committed by the prisoner is technically a forgery under the common law. Especially is this so when the wickedness of the act, the fraudulent intent with which it was committed and the final success by which the fraud was perpetrated, are undoubted."

In the case at bar it is for an offense against the Canadian law that the prisoner is held to answer, and the only question here is whether he has committed an offense which, according to this treaty (not the Canadian law), he should be extradited to that country, and there tried. This court has always construed extradition treaties liberally for the

purposes of carrying out the beneficent purposes for which they were entered into.

In *Ornelas v. Ruiz*, 161 U. S. 502, this court had under consideration an extradition treaty with Mexico where certain parties were sought for crimes of murder, arson, robbery and kidnapping. MR. CHIEF JUSTICE FULLER, in delivering the opinion of the court at page 509, said:

“Whether an extraditable crime has been committed is a question of mixed law and fact, but chiefly of fact, and the judgment of the magistrate rendered in good faith on legal evidence that the accused is guilty of the act charged, and that it constitutes an extraditable crime, cannot be reviewed on the weight of evidence, and is final for the purposes of the preliminary examination unless palpably erroneous in law.”

The commissioner has found against Kelly, both on the law and on the facts. On the facts there is no doubt but that there is ample legal evidence, and it is *not* shown anywhere that his conclusion is palpably erroneous in law. Certainly not by showing that the Canadian Criminal Code includes this *particular perjury*, and also other false swearing that would not be perjury by the law of this country.

2nd. Even were the Canadian Code *material* in determining the question here, it is not so different from the statutes of the State of Illinois and the United States as to be *material* regarding extradition from the United States to Canada.

The Canadian Code defining perjury is for all practical purposes but an *equivalent* of the Illinois statute and the United States statute regarding per-

jury. For convenience we quote them (*italics ours*):

Section 170 of the Canadian Criminal Code (Rec. 240) provides:

“Perjury defined—Perjury is an assertion as to a matter of fact, opinion, belief or knowledge, made by a witness in a judicial proceeding as part of his evidence, upon oath or affirmation, whether such evidence is given in open court or by affidavit or otherwise, *and whether such evidence is material or not*, such assertion being known to such witness to be false, *and being intended by him to mislead the court, jury or person holding the proceeding.*”

Section 225 of chapter 38 of the Revised Statutes of Illinois provides:

“Every person, having taken a lawful oath or made affirmation, in any judicial proceeding, or in any other matter where by law an oath or affirmation is required, who shall swear or affirm wilfully, corruptly and falsely, *in a matter material to the issue or point in question*, or shall suborn any other person to swear or affirm, as aforesaid, shall be deemed guilty of perjury or subornation of perjury (as the case may be), and shall be imprisoned in the penitentiary not less than one year or more than fourteen years.”

Section 5392 of the Federal Statutes provides:

“Every person who, having taken an oath before a competent tribunal, officer or person in any case in which the law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes *any material matter* which he does not

believe to be true, is guilty of perjury and shall be punished by a fine of not more than \$2,000 and by imprisonment at hard labor not more than five years," etc.

It will be observed that while the Canadian definition contains the words, "*whether such evidence is material or not*," it also contains the words, "*being intended by him to mislead the court, jury or person holding the proceeding*," which the Illinois and United States statutes do not contain.

The statutes of the several states of the Union vary considerably in the definition of perjury:

In *22 American & English Encyclopedia of Law*, page 684, it is said:

"Under statutes defining perjury or false swearing, the scope of the offense has in most cases been greatly enlarged. Whether a particular false oath constitutes an offense, will of course be determined by the language of the particular statute."

Perjury is defined in *Vol. 2, of Wharton's Criminal Law, 9th Ed., Sec. 1244*, as follows:

"Sec. 1244. Perjury, as the offense modified by statute, is now generally defined, is the corrupt assertion of a falsehood under oath or affirmation, and by legal authority for the purpose of influencing the course of law.

"Or, to give a definition drawn from the older common law authorities, it is the wilful assertion as a matter of fact, opinion, belief or knowledge, made by a witness in a judicial proceeding as part of his evidence, either upon oath or in any form allowed by law to be substituted for an oath, whether such evidence is given in open court or in an affidavit or otherwise, such assertion being known to such witness to be false, and being intended by him to

mislead the court, jury or person holding the proceeding. Perjury at common law is a misdemeanor."

This definition is the one cited and approved by *Bouvier* in his *Law Dictionary*, and is also the definition subsequently given by the *English Commissioners* in their draft report of 1879. The author in the foot note cites a number of authorities, both English and American, to support the text.

The real gist of the crime is, the intent to mislead and deceive.

The 7th definition of the word, "material" in the *Century Dictionary* is as follows:

"7: In the law of evidence of legal significance in the cause; having such a relation to the question in controversy that it may or ought to have some influence in the determination of the cause."

The language of the Canadian Code, "*being intended to mislead the court, jury or person holding the proceeding*," is substantially and practically the equivalent of "*materiality*" in the sense with which that term is used in the Illinois and Federal statutes.

For example, in *United States v. Landsberg*, 23 Fed. 585, a defendant, under examination before a United States commissioner in New York, charged with counterfeiting, testified that he had not been in prison in that state, or in any other state, when the fact was that he had been imprisoned in the state prison of that state and also in the state prison of New Jersey. He was indicted and convicted of perjury and the question before Wallace, Benedict and

Brown, judges of the Circuit Court of the Southern District of New York, was whether the statement was material. Of course, it can be readily seen that the fact of whether he had been in prison in New York or New Jersey did not, in and of itself, tend to prove or disprove the question of his guilt as a counterfeiter. The court, however, held the statement material within the meaning of section 5392 of the federal statute, inasmuch as it was calculated to deceive the commissioner.

Mr. JUSTICE BENEDICT, in delivering the opinion, said:

“The rule of the common law in regard to perjury is thus stated by Archbold: ‘Every question in cross-examination, which goes to the witness’ credit, is material for this purpose.’ Arch. Crim. Pl. & Prac. 817 (Eng. Ed.). The same rule was declared by the twelve judges in *Reg. v. Givvons*, 9 Cox, C. C. 105.

“The inquiry here, therefore, is whether the imprisonment of the accused in this state and in New Jersey was calculated to injure his character and so to impeach his credit as a witness; for it is not to be doubted that when the accused offered himself as a witness, he placed himself upon the same footing as any other witness, and was liable to be impeached in the same manner. Upon this question our opinion is that the matter stated by the accused as a witness had an obvious bearing upon the character of the witness, and could properly be considered by the commissioner in determining what credit was to be given to the testimony of the witness in respect to the crime with which he stood charged. In *Reg. v. Lavey*, 3 Car. & K. 26, the accused, when a witness, had falsely sworn that she had never been tried in the Central Criminal Court, and had never been in custody at the Thames police station. On her trial

for perjury these statements were ruled to be material matter, and the conviction was sustained. In *Com. v. Bonner*, 97 Mass. 587, a witness had been asked 'if he had been in the house of correction for any crime.' Objection to the question on the ground that the record was the best evidence was waived, and the case turned upon the materiality of the question. The matter was held to be material. The present case is stronger, for here no objection whatever was interposed to the inquiry, respecting the imprisonment of the accused. Having made no objection to the inquiry, and gained all the advantages to be secured by his false statement, it may perhaps be that it does not lie in his mouth now to say that his statement was not material."

LORD CHIEF JUSTICE DENMAN, in *Regina v. Overton*, 2 Moody's Crown Cases, 336, 340, said:

"Everything is material that affects the credit of the witness."

In *State v. Rosenberg*, 92 Atlantic, 145, MR. JUSTICE TAYLOR, in delivering the opinion of the Supreme Court of Vermont, at page 148, said:

"While it is necessary that the false swearing be material, it need not be material to the main issue or question; but it is sufficient if it is material to a collateral inquiry in the course of the proceedings. 2 Bishop's Crim. Law, Sec. 1032; 2 Wharton's Crim. Law, Sec. 1277; Clark's Crim. Law, 334; *State v. Keenan*, 8 Rich. (S. C.), 456; *State v. Shupe*, 16 Iowa, 36, 85 Am. Dec. 485, and cases cited in note."

"MR. CHIEF JUSTICE HOLT in *Rex v. Greipe*, Holt, 535, says: 'It is perjury to swear falsely in any circumstances which condueth to the issue, or to the discovery of the truth, though if it be only in some impertinent or minute circumstance.'"

In that case the alleged perjury occurred by the witness testifying *falsely* that he had not been in the court room during the trial since the court had made an order for the exclusion of witnesses; the only effect of which possibly could be that it had a tendency to mislead the court, and thereby perhaps had some bearing upon the question of whether the witness was rendered incompetent as a witness by reason of the violation of the court's order of exclusion.

In *Dilcher v. The State*, 39 Ohio State Reports, page 130, at page 134 MR. JUSTICE DOYLE says:

"It is not necessary that the testimony upon which perjury can be predicated must have the effect, if true, of establishing or deciding the matter in issue. It is sufficient if it has a legitimate bearing on that issue. *If it tends within the rules of law to influence the court or jury in deciding that issue, it is material.*" (Italics ours.)

That which is calculated and intended to "*mislead the court, jury or person holding the proceeding*" is *material* both within the rules of the common law and our own statutes. If the alleged false assertion was intended by the witness making it to "*mislead the court, jury or person holding the proceeding,*" it was necessarily "*material*" within the rule of the common law.

If we apply this principle to the language of the Canadian Criminal Code, it clearly appears that there could be no conviction in Canada under that statute for knowingly making a false statement that is not material within the rule of the common law and our own statutes, and this is true notwithstand-

ing the language, "*whether such evidence is material or not*" contained therein.

3rd. The evidence regarding the *particular perjury* herein charged, shows the *materiality* of the alleged *false* assertions. The *alleged perjury* of Kelly was committed by him while testifying before the Public Accounts Committee—a SELECT STANDING COMMITTEE of the LEGISLATIVE ASSEMBLY of the PROVINCE of MANITOBA. That committee was charged with the duty of examining and inquiring into the public accounts of the Province of Manitoba for the year preceding the appointment of said committee, and also into the matters pertaining to the said public accounts (testimony of Allen, Rec. 90).

Such a committee as the public accounts committee forms an important part of the legislative machinery under the British form of government (Rec. 90). Among the accounts into which this committee were examining were those relating to the construction of the new parliament buildings. These accounts involved large sums of money paid to Kelly. The committee was endeavoring to find out for what the moneys were paid, and whether the contract and specifications had been performed and the province had obtained the character of building that it was paying for.

A great question had arisen regarding the *caissons*. A change had been made in the original specifications from *concrete piling* to *caissons* (Rec. 168, 179), and on account of this change the province had paid Kelly nearly eight hundred thousand dollars. This committee wanted to know what for. The specifications provided that the concrete in

those caissons should be 1, 2 and 4, 1 of cement, 2 of sand, and 4 of broken stone (testimony of Woodman, Rec. 95), and for each cubic yard of concrete so composed it is conceded that it would take at least a barrel and a half of cement.

On March 25, 1915, Kelly was sworn by Mr. E. L. Taylor, the chairman of the committee (Rec. 94), and on the 26th day of March, 1915, testified as follows:

“Q. In what proportions were the ingredients in the concrete in the caissons?

A. One, two and four, or one and six. One of cement, two of sand, and four of broken stone.

Q. How much cement does it take with these proportions to make a yard of concrete?

A. A little over a barrel and a half.

Q. How much sand?

A. We make it a habit of figuring on half a yard of sand to a yard of broken stone.

Q. Half a yard of sand—and how much broken stone?

A. A yard.

Q. And a barrel and a half cement?

A. About a barrel and a half.

Q. One and a half barrels of cement, a half a yard of sand and one yard of stone make up a yard of concrete?

A. That is what we have always based on. You may get some authority to say less. They probably take it and measure it in the box.”

These answers of Kelly were *false* (Rec. 90, 91, 93), and Kelly knew them to be false (Rec. 95). The proof shows beyond any question that there was not to exceed a *barrel of cement* to a *cubic yard of concrete*, and that the ingredients were in the proportion of *one* of cement to *eight* or *nine* of sand and

gravel; that *no* broken stone was used, but instead sand and pit gravel.

Whatever may be the construction placed upon the Canadian Criminal Code in other cases, and whether the definition there given is or is not broader than the definition of *perjury* at common law and under the statutes of Illinois and the United States, it certainly cannot be denied but that *this evidence* is sufficient to show the *materiality* of the alleged false assertions, and that not only is there some evidence upon which the commissioner made his warrant, but that the evidence is amply sufficient *not only to show probable cause*, but in the absence of other evidence to show *absolute guilt* of appellant. And as the *particular perjury* charged here is the *only perjury* upon which Kelly can be tried in Canada if extradited, we fail to see how it is at all *material* that the Canadian Criminal Code, even if it be held to be broader in its definition than the statutes of Illinois and the United States, is at all *material* here. The Canadian courts would be bound to try Kelly upon the charge on which he is extradited.

For these several reasons we submit to the court that the argument of the learned counsel for appellant based upon the alleged broader definition of perjury by the Canadian Criminal Code than is required here or it may be assumed in the treaty involved, is untenable.

(b) *The alleged defect in the authority of the public accounts committee.*

It is argued by the learned counsel for appellant that because there does not appear in the record

here any *specific order* of the legislative assembly of Manitoba, referring to the public accounts committee, the matter about which Kelly was interrogated, that therefore the public accounts committee was without power or authority to examine him on oath with respect to the matter about which he testified.

REGULARITY OF PUBLIC ACCOUNTS COMMITTEE NOT MATERIAL.

1st. It may well be questioned whether it is incumbent upon the commissioner or the secretary of state in performing their duties under the treaty in question and the act of congress regulating procedure thereunder, to inquire into the regularity of the appointment of the public accounts committee, or into the regularity of the procedure by which that committee was empowered or authorized to investigate the matters in question.

Such an inquiry involves an examination into the constitution of the government of the Province of Manitoba, and its methods of procedure. Kelly is *not on trial* for the crime of perjury. Only sufficient need be shown on a hearing of this character before the commissioner or before the secretary of state to warrant placing Kelly on trial for the crime charged. It ought to be sufficient for the purposes of such a hearing that it appears there was a duly appointed committee of the legislative assembly of Manitoba, *in fact, engaged* in investigating matters regarding the construction of the parliament buildings, resulting in the payment of large sums of money, and that it had authority to administer oaths, particularly where it appears as it does in this record at page 94, that *Kelly appeared before the com-*

mittee and took the oath administered by the chairman of that committee *without objection or protest*.

The Supreme Court of Illinois had an analogous question before it in the case of *Maynard v. The People*, 135 Ill. 416, where the question was raised that the *police magistrate* had no jurisdiction of the cause wherein it was alleged the perjury was committed. MR. JUSTICE BAKER, in delivering the opinion of the court, at page 430, said:

"It does not follow, however, that the further contention of the plaintiff in error, that perjury cannot be assigned for any false testimony given by witnesses upon the hearing of said complaint, on account of the want of jurisdiction in the police magistrate to entertain such complaint, should prevail. * * *

"We understand the true doctrine to be, that although a tribunal must have jurisdiction of the cause or proceedings before perjury can be committed therein, yet that where the defect renders the proceeding voidable, only, and not absolutely void, and such proceeding is amendable, or where the defect has been waived by the parties, there may be perjury committed. See 2 Bishop on Crim. Law (5th Ed.), Sec. 1028, and authorities cited in notes. So, also, one may, if he will, and under some circumstances, waive even a right which the constitution secures to him. 1 Bishop on Crim. Law, Secs. 842-850; 1 Bishop on Crim. Proc., Secs. 112, 118, *et seq.* In the proceedings here involved, plaintiff in error elected to waive the right to quash the process or dismiss the complaint, and to go to a hearing upon the merits, and introduce testimony. If such conduct left the record destitute of an essential part, it perhaps did not estop him from afterwards taking advantage of the defect in it, in case of a conviction therein; but, *at the same time, it should be considered as a waiver of any right to claim that perjury could not be assigned upon false testimony given by him upon such hearing.*"

So here, if Kelly elected to waive any right which he had to object to the power and authority of the committee or the chairman thereof, to administer an oath, and instead of refusing to be sworn and testify, did submit himself to the jurisdiction of the committee and take the oath administered, it should be considered as a waiver of any right he may have to claim that *perjury* could not be assigned on *false testimony* given by him.

Moreover, the alleged defect was one that might have been easily cured had Kelly raised the question. The public accounts committee was but an *agency* of the Legislative Assembly, and that body then in session could easily have remedied the alleged defect if any remedy was necessary.

In *Greene v. People*, 182 Ill. 278, 282, it was objected that a master in chancery had no authority to administer an oath because not properly appointed. The Supreme Court of Illinois, said:

“We do not think the point is well taken, but if it be conceded, still it is clear that he was acting in the capacity of master in chancery at the time, and therefore his authority to administer the oath, cannot be questioned in this proceeding.”

The proceeding was a prosecution for perjury, in which Greene had been convicted and appealed to the Supreme Court on the ground of alleged error.

At least the committee on public accounts of the legislative assembly of Manitoba was a *de facto* committee, engaged in making the investigation in question. Whether it was a *de jure* committee cannot be raised in this proceeding. If it can be raised

anywhere, which we much doubt, it can only be raised when he is placed on trial for the crime charged.

2. *The evidence in the case sufficient to show jurisdiction.*

The record in this case shows (Rec. 52), that on the opening of the legislature a resolution was passed that the select standing committees for this House for the present session be appointed for the following purposes:

* * * * * * *

* * * V. On Public Accounts. * * *

* * * * * * *

“Which said committees shall severally be empowered to examine and inquire into all such matters and things as may be referred to them by the House and report from time to time their observations and opinions thereon, with power to send for papers and to examine witnesses under oath.”

A committee to select standing committees was also ordered (Rec. 52), and later that committee reported, naming the personnel of the several committees, among them the committee on public accounts (Rec. 68), which report was approved.

In the meantime, the House had issued orders upon the proper ministers for returns showing certain proceedings among others with reference to the new parliament buildings (Rec. 56, 57 and 58). Section 34, chapter 112 of an act respecting the legislature of Manitoba (Rec. 84), provides that the Legislative Assembly may at all times *command* and *compel* the attendance before such assembly, or before any committee thereof, of such persons, and

the production of such papers and records as such assembly or committee may deem necessary for any of its proceedings or deliberations, and section 35 provides for the examination of said witnesses upon oath by any select committee to which any private bill or other matter or cause has been referred to by the House and provides the form of oath (Rec. 84).

John Allen, a practicing barrister and attorney for the Province of Manitoba, and deputy attorney general, testified (Rec. 90):

“The public accounts committee of the legislature assembly of the Province of Manitoba is one of the select standing committees appointed by the legislative assembly of the Province of Manitoba, to examine and inquire into the public accounts of the Province of Manitoba for the year preceding the appointment of said committee, and also into all matters pertaining to the said public accounts.”

He further says:

“Such a committee as the public accounts committee, aforesaid, forms an important part of the legislative machinery under the British form of government.”

Having been appointed for the *express purpose* of examining and inquiring into the public accounts for the year preceding its appointment, and being found engaged in performing that duty, and Kelly having appeared before said committee and testified *without objection or protest*, it certainly is a fair deduction from these facts that the chairman of that committee had a right to administer the oath to Kelly, and that that committee had jurisdiction and authority to investigate the matter about which

Kelly was examined and that Kelly may not in this proceeding question its power, or authority.

In passing upon this question the learned judge who heard this case in the court below, said (JUDGE LANDIS' OPINION, p. 67):

"There is no evidence here, direct evidence, that anything was referred to this committee on public accounts. So the question, and it has got to be met, and got to be met in this proceeding: Is there reason here to believe that Kelly was required to appear before that committee? If nothing had been referred to them, Kelly would not have had to respond, because if nothing had been referred they would have had no authority to require Kelly to respond, because they would have had nothing to inquire into: So that question comes down on this phase of it: Is there reasonable ground to believe, or is probable cause shown, that this thing which Kelly was examined about had been referred to that committee for its attention."

The learned judge then reviews the various proceedings and some of the evidence showing the subject-matter of the inquiry, and then concludes (Opinion, p. 71):

"On the question of there being no authority shown for this committee to ask these questions, I find that from the fact that the legislature called for these reports of these things and subsequently passed an order appointing these men on the committee to investigate the public accounts of the province, that the Canadian law thereupon gave that committee jurisdiction over public accounts during the preceding year; that that committee thereafter met; that it called Kelly as a witness; that Kelly responded as a witness; that the chairman gave him the oath and he took the oath, and that he testified as a witness to such a state of facts as not only

authorizes but requires the court to find as exhibiting a situation probably showing that therefore the Canadian parliament had passed an act referring this question to that committee? Was it material? Of course a mere statement of the facts exhibits plainly the materiality of the questions and the materiality of the answers. The committee was investigating public accounts. One account related to the construction of caissons under a public building. The man who did the work was called before the committee. He was asked what he put into the caissons, and he gave the answer. That is material to the question which that committee was charged with investigating."

We contend that the question is a question of fact upon which the commissioner had sufficient lawful evidence before him to find that the public accounts committee was authorized to examine Kelly on the matter under oath, and

3rd. That Kelly by submitting to the jurisdiction of the committee, and there testifying without *objection or protest*, waived any right that he might otherwise have of contending in this proceeding that he was not lawfully sworn.

IV.

AS TO THE CHARGE OF OBTAINING MONEY BY FALSE PRETENSES.

The argument of the learned counsel for appellant upon this proposition seems to be in effect nothing more nor less than an argument on the weight of the evidence.

It is contended that the evidence does not show probable cause for believing that the crime of ob-

taining money by false pretenses has been committed because, it is argued, no one representing the government of the Province of Manitoba was deceived, and no one representing the government relied upon the alleged false statements.

These are questions of *fact* to be determined from the *evidence*, and questions which this court under the rule many times announced will not inquire into so long as there appears to be any evidence upon which the commissioner may exercise his judgment.

McNamara v. Henkel, 226 U. S. 520, and cases cited in that opinion.

"False Pretences" is defined in Bouvier's Law Dictionary, Vol. 1, p. 756, as follows:

"False representations and statements made with a fraudulent design to obtain 'money, goods, wares and merchandise' with intent to cheat."

Further on, in discussing the question and referring to the fact that the wording of the statutes in the different states vary somewhat, it states:

"It may be laid down as a general rule of the interpretation of the words 'by any false pretense,' which are in the statutes, that wherever a person fraudulently represents as an *existing fact* that which is not an existing fact, and so gets money, etc., that is an offense within the acts."

The Criminal Code of Canada, Section 404 (Rec. 225), is:

"False Pretense Definition. — False pretense is a representation either by words or otherwise, of a matter of fact either present or past, which representation is made with a fraudulent intent

to induce the person to whom it is made to act upon such representation."

Section 405, Punishment for Obtaining by False Pretense:

"Every one is guilty of an indictable offense, and liable to three years imprisonment who, with intent to defraud by any false pretense, either directly or through the medium of a contract obtained by such false pretense obtains anything capable of being stolen, or procures anything capable of being stolen, to be delivered to any person than himself."

Section 406, Obtaining Execution of Valuable Security by False Pretense:

"Every one is guilty of an indictable offense and liable to three years imprisonment who, with intent to defraud or injure any person by any false pretense, causes or induces any person to execute, make, accept, endorse or destroy the whole or any part of any valuable security, or to write, impress or affix any name or seal on any paper or parchment in order that it may afterwards be made or converted into or used or dealt with as a valuable security."

Section 96 of Chapter 38 of the Revised Statutes of Illinois, provides:

"Whoever, with intent to cheat or defraud another, designedly by color of any false token or writing, or by any false pretense, obtains the signature of any person to any written instrument, or obtains from any person any money, personal property or other valuable thing, shall be fined, etc."

The Supplemental Treaty of December 13, 1900, includes, among the crimes for which extradition is to be had, the following:

“11. Obtaining money, valuable securities or other property by false pretenses.”

Kelly is *specifically* charged with having obtained \$779,987 of public moneys of the Province of Manitoba with intent to defraud His Majesty the King in the right of the Province of Manitoba (Rec. 40). The charge is specific, and the proof amply sustains the charge.

The false statements and pretenses are contained in McTAVISH EXHIBITS 7, 8, 9, 10, 11 and 12 (Rec. 145, 146, 147).

Those *statements* are the *basis* upon which Kelly obtained *public moneys* to the amount of \$779,987. These are not the usual “progress estimates” made on a building contract containing definite and specific plans and specifications for the work to be performed. These statements are for *extra work* and based upon a *quantum meruit*. Each one of them contains the statement “*To labor and materials supplied for above, as follows.*” It is addressed to “*Provincial Government, Department of Public Works,*” and the subject is stated to be “*Caisson Foundation, New Parliament Buildings.*”

These statements allege, as a matter of fact, that Kelly & Sons had put in those *caisson foundations* 35,993 cubic yards of *reinforced concrete*; that he had used in constructing the same 1,213,000 feet of lumber, and 797.5 tons of iron rings and bolts, and those statements of fact were *false*, and known by Kelly to be *false*, and made to the government with the *intent* that they should be *relied on as facts*, and accepted as a *basis for payment*.

It is contended that the crime of obtaining money by false pretenses was not committed because the evidence shows that certain of the officials who had to pass upon these applications were in collusion and conspiracy with Kelly, and were not deceived by the statements and did not rely thereon. It will be recollected that the moneys which Kelly obtained were *public moneys*, the title to which was in His Majesty the King, for the use and benefit of the Province of Manitoba.

It is *inconceivable* that because Kelly had assistance in obtaining the public moneys, and that some of the parties assisting him were trusted officials of the government, that it can in any way lessen or change the character of his offense.

The government was *deceived* and *defrauded* by the *false pretense*, if some of its trusted officials were not. His Majesty the King, who held title to the money, *was defrauded*, even if some of his trusted agents assisted in the accomplishment of it. *The foundation and basis of getting the money from the treasury were these false statements of fact which were carried through all the proceedings until the money was paid.*

But not all of the officials having to do with the paying out of this money were in collusion with Kelly. The very *first* person who acted upon these false statements was PETER GORDON McTAVISH, an accountant in the provincial architect's office, who had charge of applications of this character. He says (Rec. 125):

“Believing in and acting upon the correctness of these applications I made out certificates

for signature by the provincial architect certifying that the said firm of Thomas Kelly & Sons were entitled to be paid in respect of said estimates, the amounts set out in said certificates. I did not make out, and I would not have made out, certificates for signature by the provincial architect, until I received from the said firm of Thomas Kelly & Sons applications for payment; and said firm would not have received payments, had they not sent in such applications."

There is no evidence in the record to show that McTavish was in the conspiracy, or was other than an *honest official*. It is true that the provincial architect was in collusion with Kelly, and made his certificates based on these *false* and *fraudulent* statements. The minister of public works, to whom his certificates were addressed, was also in the conspiracy, and in collusion with Kelly, and through his influence orders in council were made for their payment which passed to the auditor and provincial treasurer. There is no evidence in the record to show that the auditor or the provincial treasurer had any connection whatever with the fraud in question.

The question whether the *government was deceived* or did *not* rely upon the *false statements of Kelly* is a question which Kelly cannot raise. There can be no negligence imputed to the government. Even where the defrauded party is an individual, negligence is no defense.

Thomas v. The People, 113 Ill. 531-537.

Keys v. The People, 197 Ill. 638-641.

In *People v. Goodhart*, 248 Ill. 373, the sufficiency of an indictment for attempting to obtain money

from the *London Auto Supply Company*, a corporation, by means of a confidence game was questioned. The point was made that the essential elements of the crime was the act by which the defendant sought to influence or create *confidence* in the mind of another in order that he might swindle such person out of his money or property, and that as a corporation has *no mind* and can only act through its officials or representatives, therefore, where the offense is *obtaining or attempting to obtain money from a corporation*, the indictment should *name the person or persons* upon whose mind the defendant was operating in attempting to effect the imposition. The court held no such allegations were necessary. Quoting from the case of *State v. Turley*, 142 Mo. 403, the court said:

“A corporation is ‘a body consisting of one or more persons established by law for certain specific purposes, with the capacity of succession (either perpetual or for a limited period) and other special privileges not possessed by individuals yet acting in many respects as an individual.’ (4 Am. & Eng. Ency. of Law, 185.) It can only speak and act through its board of directors or agents. Its directors are limited in number by its charter, but it may have any number of agents. No one would contend that representations of the character of those defendant is charged with making, if made in writing and addressed to a corporation, would render it necessary to allege that they were relied upon by some particular director or agent of the corporation, and the same rule applies when such statements and representations are verbal.”

If not necessary to allege, not necessary to prove and still less necessity to allege or prove when the moneys of the government are wrongfully obtained.

We respectfully submit that there is no basis for the contention of the learned counsel for appellant that there is *no evidence* upon which the mind of the commissioner could act, showing probable cause to believe that Kelly was guilty of the crime of obtaining money by false pretenses within the statutes of both countries and the treaty.

V.

AS TO THE CHARGE OF EMBEZZLEMENT, LARCENY; RECEIVING MONEY KNOWING IT TO HAVE BEEN EMBEZZLED, STOLEN OR FRAUDULENTLY OBTAINED.

Here again the learned counsel present to this court a *question of fact* and one upon which the commissioner had evidence before him upon which to act.

The *third crime* provided for in the Blaine-Pauncefote Treaty of July 12, 1889, is specified in the following language:

“3. Embezzlement, larceny; receiving any money, valuable security or other property, knowing the same to have been embezzled, stolen or fraudulently obtained.”

The fourth specification provides:

“4. Fraud by bailee, banker, agent, factor, trustee, or director or member or officer of any company, made criminal by the laws of both countries.”

The treaty also provides “extradition is also to take place for *participation* in any of the crimes mentioned in this convention or in the aforesaid tenth article, provided such participation be punishable by the laws of both countries.”

The crimes scheduled in the *third* specification of the treaty are merged in *one definition* by the Criminal Code of Canada, under the name of "THEFT."

Section 347 and sub-sections provide (Rec. 224):

"Thefts defined—Theft or stealing is the act of fraudulently and without color of right taking or fraudlently and without color of right converting to the use of any person, anything capable of being stolen, with intent,

(a) to deprive the owner, or any person having any special property or interest therein, temporarily or absolutely, of such thing, or of such property or interest; or

(b) to pledge the same or deposit it as security; or

(c) to part with it under a condition as to its return which the person parting with it may be unable to perform; or

(d) to deal with it in such a manner that it cannot be restored in the condition in which it was at the time of such taking and conversion.

"2. Theft is committed when the offender moves the thing or causes it to move or to be moved, or begins to cause it to become moveable, with intent to steal it.

"3. The taking or conversion may be fraudulent, although effected without secrecy or attempt at concealment.

"4. It is immaterial whether the thing converted was taken for the purpose of conversion, or whether it was, at the time of the conversion, in the lawful possession of the person converting."

Section 359, and sub-section (c) provides:

"Clerks and servants.—Every one is guilty of an indictable offense and liable to fourteen years' imprisonment who,

(c) being employed in the service of His Majesty, or of the Government of Canada, or the government of any province of Canada, or of any municipality, steals anything in his possession by virtue of his employment."

Section 399 provides (Rec. 225):

"Receiving property obtained by any indictable offense.—Every one is guilty of an indictable offense and liable to fourteen years' imprisonment who receives or retains in his possession anything obtained by any offence punishable on indictment, or by any acts where-soever committed, which, if committed in Canada, would have constituted an offense punishable upon indictment, knowing such thing to have been so obtained."

Section 400, Receiving Stolen Property, provides:

"Every one is guilty of an indictable offense and liable to five years' imprisonment who receives or retains in his possession any post letter or post letter bag, or any chattel, money or valuable security, parcel or other thing, the stealing whereof is hereby declared to be an indictable offense, knowing the same to have been stolen."

Section 402 provides:

"When Receiving is Complete.—The act of receiving anything unlawfully obtained is complete as soon as the offender has, either exclusively or jointly with the thief or other person, possession of or control over such thing, or aids in concealing or disposing of it."

Section 167 of Chapter 38 of the Revised Statutes of Illinois defines larceny as follows:

"Larceny is the felonious stealing, taking and carrying, leading, riding, or driving away

the personal goods of another. Larceny shall embrace every theft which deprives another of his money or other personal property, or those means or muniments by which the right and title to property, real or personal, may be ascertained. Private stealing from the person of another, and from a house in the day time, shall be deemed larceny. Larceny may also be committed by feloniously taking and carrying away any bond, bill, note, receipt or any instrument of writing of value to the owner."

Section 74 of Chapter 38, Revised Statutes of Illinois, defines "Embezzlement" as follows:

"Whoever embezzles or fraudulently converts to his own use, or secretes, with intent to embezzle or fraudulently convert to his own use, money, goods or property delivered to him, which may be the subject of larceny, or any part thereof, shall be deemed guilty of larceny."

Section 80 provides:

"If any state, county, township, city, town, village, or other officer elected or appointed under the constitution or laws of this state, or any clerk, agent, servant or employe of any such officer, embezzles or fraudulently converts to his own use, or fraudulently takes or secretes with intent so to do, any moneys, bonds, mortgage coupons, bank bills, notes, warrants, orders, funds or securities, books of record, or of accounts, or other property belonging to, or in the possession of the state or such county, township, city, town or village, or in possession of such officer by virtue of his office, he shall be imprisoned in the penitentiary not less than one, nor more than fifteen years."

Section 239, of Chapter 38, Revised Statutes of Illinois provides:

“Receiving—Every person who, for his own gain, or to prevent the owner from again possessing his property, shall buy, receive or aid in concealing stolen goods, or anything the stealing of which is declared to be larceny, or property obtained by robbery or burglary, knowing the same to have been so obtained, shall be imprisoned in the penitentiary not less than one nor more than ten years, etc.”

(See also Section 142, Chapter 38, Revised Statutes of Illinois, which makes criminal among other things any *contract* made with *intent to deceive and defraud*.)

It is contended that none of these provisions to the Illinois Statutes are here shown by the evidence to have been violated.

But even if this were true (which we do not by any means admit), the evidence here shows a clear violation of SECTION 5438 and SECTION 5497 of the Revised Statutes of the United States.

SECTION 5438 PROVIDES:

“Every person who makes or causes to be made, or presents or causes to be presented, for payment or approval to or by any person or officer in the civil, military or naval service of the United States, any claim upon or against the Government of the United States, or any department or officer thereof, knowing such claim to be false, fictitious, or fraudulent, or who, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, makes, uses, or causes to be made or used, any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry, or who enters into any agreement, combination, or conspiracy to defraud the Govern-

ment of the United States, or any department or officer thereof, by obtaining or aiding to obtain the payment or allowance of any false or fraudulent claim * * * shall be imprisoned at hard labor, etc. * * *."

SECTION 5497 PROVIDES:

"Every banker, broker, or other person not an authorized depository of public moneys, who knowingly receives from any disbursing officer, or collector of internal revenue, or other agent of the United States, any public money on deposit, or by way of loan or accommodation, with or without interest, or otherwise than in payment of a debt against the United States * * * etc. * * * shall be punished * * *."

The CHARGE is that Kelly *unlawfully received money* belonging to His Majesty the King, in the right of the Province of Manitoba, that had *therefore been embezzled, stolen or fraudulently obtained* by means of an unlawful Conspiracy entered into between Kelly and certain Provincial officials (Rec. 41).

The evidence sustains the charge. It is clearly shown by the record that Kelly received over a million dollars of the Government moneys as the result of the criminal conspiracy between himself and others.

This charge is directly within the terms of the treaty. That it is a crime in both countries is apparent.

The contention of counsel that there is no evidence showing that any money had been received by Kelly that had been theretofore embezzled, stolen or fraudulently obtained by anybody is without merit.

We infer from the statement that it is the contention of counsel that because Kelly was a *party to the fraud* by which the money was unlawfully obtained, that he does not come within the category of receiving money knowing it to have been embezzled, stolen or fraudulently obtained. If that be counsel's theory, we deny that it is sound.

This case is in its *essential particulars* very like the case of the *United States v. Gaynor & Greene*, 146 Fed. 766, with the two governments reversed. Gaynor and Green were charged in a Federal Court in Georgia, with being engaged in a corrupt conspiracy with Captain Oberlin M. Carter, a disbursing officer of the United States, to defraud the government out of large sums of money, and he was surrendered by the Dominion government on the application of the Government of the United States under the very treaty now in question, to be tried for, *FIRST, participation in fraud by an agent or trustee, SECOND, participation in embezzlement; and THIRD, for receiving money and property, knowing the same to have been fraudulently obtained.*

Gaynor and Greene were indicted by the Federal Grand Jury at Savannah for conspiracy in violating section 5440 of the Revised Statutes and also for offenses under section 5438, and a third indictment for offenses under sections 5497 and 5488. Because the indictments under which Gaynor and Greene were tried were called *conspiracy* indictments, they filed a long plea in abatement under which they contended that they were not being tried for the crimes, or either of them, for which they had been extradited

and therefore that the courts were acting in violation of the treaty.

This contention was overruled, *first*, by SPEER, DISTRICT JUDGE, in sustaining a demurrer to the plea, *United States v. Greene et al.*, 146 Fed. 766, in a very exhaustive and convincing opinion; *second* by the decision of the Circuit Court of Appeals for the Fifth Circuit, *Greene et al. v. United States*, 154 Fed. 401, in which a second exhaustive opinion is given by SHELBY, CIRCUIT JUDGE, who, among other things said:

“It is contended by counsel that the extradition is for participation in fraud by an agent or trustee, and that the first and second indictments are for conspiracy. That is true, but it is not the whole truth. The conspiracy charged in the indictment is a conspiracy with an agent to defraud. The acts of the defendants charged as constituting the participation in fraud in the extradition are the same acts charged as a conspiracy to defraud in the indictments. While the extradition and the indictment must be for the same criminal acts, it does not follow that the crime must have the same name in both countries. The same crime often has different names in different countries. If the act in question is criminal in both countries and is within the terms of the treaty, nothing more is required.”

THIRD: By this court denying a writ of certiorari, *Greene et al. v. United States*, 207 U. S. 956.

In that case *Gaynor* and *Greene* were charged with entering into a conspiracy with an agent of the United States Government to defraud the Government, and that they succeeded in the conspiracy, and

Gaynor and Greene *received moneys so fraudlently obtained.*

In this case, Kelly is charged with having entered into a fraudulent conspiracy with certain Provincial officials of the Province of Manitoba to defraud His Majesty the King, in the right of the Province of Manitoba out of public funds, and that the conspiracy succeeded to the extent of Kelly *receiving* as the result more than *a million dollars.*

In conclusion, we contend that the Executive Department is justified in deciding to extradite the appellant under the treaty in question for the charges made, and that the court below decided correctly in discharging the writ of *haebeas corpus* and remanding the petitioner for extradition.

Respectfully submitted,

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CLAIR E. MORE,

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*Attorneys for Appellees, and
the Province of Manitoba.*



ORAL OPINION OF JUDGE LANDIS.

IN THE DISTRICT COURT OF THE UNITED STATES,
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

IN THE MATTER OF THE PETITION OF THOMAS KELLY.

Chicago, November 24, 1915; 10 A. M.

DECISION.

Landis, J.

This is an application by the petitioner, Thomas Kelly, for discharge from what he asserts to be the unlawful detention of him by the jailer of Waukegan, Lake county. On the filing of this petition the writ was issued, and with the return there has come into the court the record of a certain hearing had before a United States commissioner of this District in an extradition proceeding, wherein the Canadian authorities sought to take from the United States to the Province of Manitoba in the Dominion of Canada this petitioner to answer a charge of crime. There has also been brought into the record here, after the return by the officer exhibiting his authority for holding Kelly, a certain other record from the commissioner's office. So that the matter before the court is to be determined from a record made up by the petitioner's petition, the return of the officer to

the writ which the court awarded the petitioner, and the other matter brought in after the return by the officer, brought in from the commissioner's court, the pertinent substance of which I shall refer to later.

There is an extradition treaty between the United States and Great Britain containing provision for the return from the territories of one country to the territories of the other country of persons charged with crimes mentioned in the treaty. Without such a treaty, of course, there would be no authority under our system of government for the expulsion of a human being from our territory. Any authority for such an act must be found in a treaty.

The treaty between the United States and Great Britain provides for the extradition of fugitives charged appropriately with the crime of perjury; also for the extradition of fugitives charged appropriately with the crime of obtaining money under false pretense. And then another provision inserted or added to the extradition agreement between the United States and Great Britain by a treaty entered into by Sir Julian Pauncefote and Mr. Blaine in 1889, which also provides for perjury, but the clause I call specific attention to now is the following clause, number 3:

“Embezzlement, larceny, receiving any money, valuables, securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained.”

Now those are the three offenses with which this petitioner, as shown by the return of the officer, was charged in the Province of Manitoba, and extradition for which and each of which is sought by the

Canadian Government in the proceeding resulting in an order from the commissioner in accordance with the Canadian Government's demand, and relief against which the proceeding before me was instituted to obtain.

I shall not go into detail, needless detail, into the facts presented by this record. I say *needless* detail. I shall not refer to these facts any farther than is necessary. They are of such a character that considering the one-sided character of a commissioner's hearing, that is to say, having in mind the fact that it is rather a proceeding from which an accused person is barred as to making a defense is concerned, having these things in mind, and considering the nature of the evidence disclosed, I shall not go into needless detail in referring to the facts. They may all be denied or explained away in a hearing.

It appears from the situation here that in the Province of Manitoba there is a legislature; that that legislature met, and appointed what were known as standing committees; that one of these committees was called The Committee on Public Accounts; that the Committee on Public Accounts under the Manitoba law was charged with the authority and duty of looking into the public accounts of the Province for a year, during the year preceding the appointment of the committee; that that committee met, having been named, in accordance with a resolution which appointed a committee on committees, which committee on committees made its report of the appointment of the members of this select committee; that that committee so named met;

that being in session, this petitioner came before that committee as a witness; that being before the committee as a witness, there was administered to this petitioner by the chairman of this committee, charged by the Manitoba law with looking into the provincial accounts, the oath to tell the truth as a witness, and that thereupon this petitioner was asked certain questions and gave certain answers. Those answers formed the basis of the charge by the Manitoba Government that this petitioner, when he gave those answers, committed the crime of perjury, and the petitioner assails the position of the demanding Government that he be sent back there to respond to that accusation, for two reasons. In the first place, the petitioner says the thing called a select committee was without power to ask him the questions; secondly, passing that point, that the demand of the Canadian Government that the man go back there to answer the charge of perjury should be refused because the Canadian definition of perjury is broader than ours. That is to say, the Canadian statute makes a wilful false statement perjury, even though the false statement be respecting an immaterial thing.

Now as to the first one of these two propositions, namely, that this committee called a Select Committee on public accounts is not shown by this record to have been sitting there in the exercise of power theretofore conferred by its creator. There is nothing in this record directly and specifically setting out one essential link to that authority. It is not here definitely, directly, specifically. The law of Canada provides that these committees which are

appointed at the beginning of the legislative session shall have jurisdiction over such matter as may be referred to them by the legislature.

“Resolved; That the select standing committees of this House for the present session be appointed for the following purposes—.”

Naming one of many, of which the fifth is “on public accounts,”

“which said committees shall severally be empowered to examine and inquire into all such matters and things as may be referred to them by the House, and to report,” etc.

There is no evidence here, direct evidence, that anything was referred to this committee on public accounts, so the question is, and it has got to be met, and it has got to be met in this proceeding: Is there reason here to believe that Kelly was required to appear before that committee? If nothing had been referred to them, Kelly would not have had to respond, because if nothing had been referred they would have had no authority to require Kelly to respond, because they would have had nothing to inquire into. So that question comes down on this phase of it: Is there reasonable ground to believe, or is probable cause shown, that this thing which Kelly was examined about had been referred to that committee for its attention?

Preceding the appointing of this committee, it appears from the Journal of the legislature that a series of orders had been passed by the legislature calling upon various ministers of the Province to send in to the legislature reports covering various activities, among others, the work done by contrac-

tors in connection with parliament buildings at Winnipeg. At least two of those orders were enacted by the legislature, calling for information from that department having such things in charge, subsequent to which the committee on public accounts at a session had Kelly before it as a witness, and on which occasion there was submitted to Mr. Kelly a series of questions respecting a subject-matter which I now will refer to somewhat in detail, as necessary to an understanding of the question primarily of materiality in the answers charged to have been given by Kelly, and alleged by the Canadian Government to have been false.

It appears that prior to the meeting of the legislature and prior to the meeting of this committee there had been certain work done in and about the Manitoba Parliament building. That part of it with which we are concerned particularly here relates to the caisson foundations of the building. It appears that Kelly had been a contractor, his firm had been a contractor in the Province; that they had taken a contract in connection with the parliament building; that in addition to the contract there had been an undertaking by Kelly respecting the construction of caissons, the change of caissons. They were to be constructed of a certain character; they were to be constructed of concrete, reinforced in a way indicated by the understanding between Kelly's firm and the Dominion authorities.

The caissons were constructed, and a time came when there was an inquiry. There were charges by suspicious people that all was not right, and an inquiry set on foot, from which and by which it was

disclosed that witnesses testified to a state of facts, the substance of which was that Kelly's firm did not put into the caissons what they had agreed to put in. They had agreed to put in a concrete composed of a certain amount of cement, a certain amount of sand—a certain part of sand and a certain part of crushed stone, whereas, as the evidence of witnesses subsequently examining the caissons—by that evidence it appeared that there had been a gross disproportion as to these elements—these elements, ingredients, there being a practical absence of crushed stone as testified by some of the witnesses.

Now, the thing that Kelly was asked about, and replies to which questions the Canadian Government here charges him with perjury, was as to what went into the caissons which his firm had constructed and put in the ground.

Going over this printed document, it seems to me that somebody has been very generous in the matter of spending money printing something—I don't see for the life of me what the necessity was of the re-printing of all these pages. I am not blaming anybody; I am just observing—a rather unusual situation. Do you know what page that man's evidence is who sets out Mr. Kelly's testimony? Do you know, Mr. Miller?

Mr. Bulkley: There is an index there in that—

The Court: What is the name of the man who gave that evidence?

Mr. Bulkley: I think it is Killey, isn't it?

The Court: Did Allen give that evidence?

Mr. Bulkley: No, Killey.

Mr. Cobb: I could find it for you if you wish.

Mr. Miller: The stenographer, I think.

The Court: Yes, the stenographer. What was the stenographer's name? Here it is. Kelly was asked this question:

"Q. In what proportion were the ingredients in the concrete in the caissons? A. One, two and four, or one in six; one of cement, two of sand, and four of broken stone.

"Q. How much cement does it take with these proportions to make a yard of concrete?

A. A little over a barrel and a half.

"Q. How much sand? A. We make it a habit of figuring on half a yard of sand and half a yard of stone.

"Q. Half a yard of sand, and how much broken stone? A. A yard.

"Q. And a barrel and a half of cement? A. About a barrel and a half.

"Q. One and a half barrels of cement and a half a yard of sand and one yard of stone make up a yard of concrete?

"A. That is what we have always based on. You may get some authority that says less. They probably take it and measure it in a box.

"Q. How many bags in a barrel of cement? A. Four."

The witness' answer as to the ingredients that went into those caissons the Canadian Government charges are false, and it says they are false because it says an analysis, an examination of the caissons

in the ground shows a total, practically a total absence of crushed stone, at least from many of the caissons, and a gross disproportion in the matter of cement and sand.

On the question of there being no authority shown for this committee to ask these questions, I find that from the fact that the legislature called for these reports of these things and subsequently passed an order appointing these men on the committee to investigate the public accounts of the Province, that the Canadian law thereupon gave that committee jurisdiction over public accounts during the preceding year; that that committee thereafter met; that it called Kelly as a witness; that Kelly responded as a witness; that the chairman gave him the oath and he took the oath, and that he testified as a witness, is such a state of facts as not only authorizes but requires the court to find as exhibiting a situation probably showing that theretofore the Canadian Parliament had passed an act referring this question to that committee? Was it material? Of course a mere statement of the facts exhibits plainly the materiality of the questions and the materiality of the answers. The committee was investigating public accounts. One account related to the construction of caissons under a public building. The man who did the work was called before the committee. He was asked what he put into the caissons, and he gave the answer. That is material to the question which that committee was charged with investigating.

The objection is made that that does not authorize extradition under the perjury charge, however,

because the Canadian definition of perjury is broader than ours. That the Canadian charge of perjury may enter into immaterial matter, that is true. The answer to it is that the subject-matter of the Canadian demand is that kind of perjury that we recognize as perjury, and the mere fact that the Canadian statute has gone farther and made something else perjury, in addition to what we call perjury, does not nullify the Canadian Government's right to have extradition of a fugitive charged with an offense that is covered by the extradition treaty, and that is perjury in both countries. The suggestion that he may be taken back to Canada and convicted of some other perjury, immaterial perjury, immaterial false swearing—of course he may be, but I have got to trust the Canadian courts to obey the law. If they allow this man to be convicted of perjury other than that for which they demand his extradition here, the courts would be violating the law. The rule is that in these matters the courts of the two countries will indulge the presumption, as a sort of a matter of comity, that the courts of the other country will obey the law. So I will pass the perjury charge.

There is a charge in this demand that this man committed the crime of obtaining money by false pretenses, and it is urged that this record presents a situation that forbids his extradition on that charge for a reason which I shall presently point out. The criminal offense of obtaining money by false pretenses, which is covered by the statute, and which is an offense in both countries, I will assume for the purpose of this question to be the obtaining of money by a false pretense, the pretender knowing the fal-

sity, the person paying the money being deceived by the false pretense, paying the money on the faith of the false pretense. Without the false pretense the money would not be paid. I assume that those elements are essential to that crime.

In this case the petitioner says he should not be extradited under the charge of obtaining money by false pretences, because, he says, nobody was deceived, as shown by the record in this case. Now the record shows—at least tends to show—the record tends to show that the firm of Kelly & Sons, which were putting in the caissons under the government building, made out applications for money to be paid on account from time to time as work progressed. These applications contained somewhat in detail representations as to what work had been done. They would be presented to an official, and that official would approve the application, and then the application thus approved would go to some other official, who would make a voucher, an accountant would make a voucher; then the voucher would go to somebody who would audit it and would O. K. it, and finally it would go to a treasurer who would pay the money or issue his check.

The evidence tends to show that these applications for payment on account in some instances were at least a trifle exaggerated, and that the contractor knew it. As to how much, it is not necessary now to detail. But the evidence tends to show that the contractor knew it, and that the application was O. K.'d and approved and vouchered and audited, and finally that the man got the money.

Now from this record here it appears that although there was a large conspiracy of a criminal character, running from Kelly close to the chief executive, not including him, but getting close to the neighborhood of the lieutenant-governor, including cabinet officers, inspectors, architects, and the proposition is that inasmuch as nobody was fooled by Kelly, the mere fact that he got all this money don't amount to false pretences, as that is known to be and defined to be a crime.

Now there is no doubt about the fact that if Mr. Bulkley goes to Mr. Miller and presents a statement of services rendered by Bulkley, which statement is false, and Mr. Miller, looking at the statement, believing the assertion to be true, it being a claim against Mr. Miller for money for services rendered by Bulkley, and Mr. Miller believing the statement to be true, the services to be rendered as detailed, pays the money to Bulkley, there is an ideal case of obtaining money by false pretences.

But suppose that Mr. Miller and Mr. Bulkley and Mr. More and Mr. Dickinson, and these gentlemen about here, are all officials of a corporation, one of them is the first man that would have to do with a person demanding money from the corporation, and another one is the last man, that has the last say as to the payment of money from the treasurer of the corporation, and the others hold intermediate positions of trust and confidence under the authority and law of the organization of the corporation, they inspect and audit and check and voucher and inquire as to the legitimacy and validity of demands against the corporation for the payment of money.

Now suppose all these gentlemen get into a scheme to get into the hands of somebody the money of the corporation whose agents they are, and as a matter of fact no agent charged with taking a step in the auditing and checking and paying out of the money of the corporation is deceived, the fact remains the corporation itself is deceived; the entity whose money is taken is deceived. It cannot be otherwise in my judgment. Or as in this case all the officers of this province were corrupt, everybody was a thief, as claimed here. The mere fact that the conspiracy succeeded in reaching those high in authority, those who would sign the check that would give the man the money, that nobody acted on the faith of the truthfulness of the representations—it cannot be that the mere universality of the criminal conspiracy is a defense to the charge of obtaining money by false pretences. The province whose money was taken was deceived. At least, that is my opinion; I may be wrong about it. There is much record evidence. I have erred before. But it appears that in this particular matter everybody was not deceived.

I feel it to be my duty to rescue from this mass of corruption here an accountant who testifies that these applications came to him; that as an essential to the ultimate payment of the money represented to be due by these applications this accountant had to act. He was an obscure subordinate, apparently not in a situation to entitle him to be considered in the conspiracy. But he testifies that these applications came to him, they would be accompanied by a letter from the firm asking payment of the amount

specified in the estimate or application on account of material supplied and work done in respect to the new parliament buildings, and asking that the estimate be put through. Most of these were signed by Lawrence C. Kelly on behalf of the firm. "Believing and acting on the correctness of these applications, I made out certificates for signature by the provincial architect, certifying that Kelly & Sons were entitled to be paid the amount set out in these certificates. I did not make out, and I would not have made out, certificates for signature by the architect until I received from Kelly & Sons application for payment, and the said firm would not have received payments had they not sent in such applications."

Now the architect was not deceived, as shown by this evidence. The man that signed these things was not deceived. I say he was not—there is evidence tending to show that he was not deceived. But Peter Gordon McTavish was deceived. Under their system Peter Gordon McTavish had to make out these papers to be approved by the architect. And I haven't the slightest doubt that the deception of Peter would fulfill the requirement of the payment of the money on the faith of the truthfulness of the statements, even though before Peter was fooled, architects were corrupted, inspectors stood by and watched the mixture of the concrete as their part of the conspiracy, and after the paper was made out by Peter it was signed by his superior, the architect, who knew it was a dishonest application, audited by a crooked auditor and paid out by a crooked treasurer. The deception of Peter fulfills the re-

quirement of the definition, if it is a requirement, that the money must be paid on the faith of the deception.

Now I come to the last proposition. The charge in the warrant, in the complaint, is embezzlement, larceny, receiving any money, valuable security or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained. That is to say, under that clause of the treaty of 1889, this man is also sought to be extradited, in addition to the charge of perjury and obtaining money by false pretenses. There is a dearth of authority, as far as the argument before me was concerned, and as far as my independent examination of it is concerned, on this particular clause. But in the State of Illinois there is a statute which makes it an offense for a man to receive money which is embezzled by another man. There is a statute which in my opinion makes it an offense for a man to receive money that has been fraudulently obtained to his knowledge by another person from somebody else. "Every person who shall be a party to any fraudulent conveyance of any lands, tenements or hereditaments, goods or chattels, or any right or interest issuing out of the same, or to any bond, suit, judgment or execution, contract or conveyance, had, made or contrived with intent to deceive and defraud others, or to defeat, hinder or delay creditors or others of their just debts," etc., "or who being a party as aforesaid at any time shall wittingly and willingly put in use, avow," etc., "or defend the same or any of them as true, and done, had or made in good faith or upon good consideration, or shall sell or assign, shall be fined \$1,000."

That is the only statute I find in Illinois, strange enough, that meets the situation here. But I haven't the slightest doubt that if the evidence disclosed in this record as to what took place there in connection with the getting of this money, was put before a court in support of an indictment appropriately drawn under that section, that the court would be required to refuse to direct a verdict of not guilty.

The Canadian law covers the offense of receiving money obtained by fraud. In Canada it is called a theft. The extradition treaty authorizes the surrender of a person charged with receiving any money, valuable security or other property, knowing the same to have been embezzled, stolen or fraudulently obtained. The good faith that must characterize the treatment of a demand by one Government on another Government for the surrender of a fugitive charged with an extraditable offense would not permit the United States, on the showing of fact made here, if there was no charge of perjury and no charge of obtaining money by false pretenses, to refuse to give up Kelly on that charge, in my opinion, even though Kelly himself was a party to the fraud, the object and purpose and result of which was separating the Canadian Government from its money.

The questions that were suggested as to the authentication to these papers I will not go into. I think they are without merit. The rule which the Supreme Court of the United States has never failed to lay down is that a complaint in an extradition matter is good if it correctly and accurately informs

the alleged fugitive of the charge he is called upon to meet, and if this complaint is fortified by competent evidence, showing reasonable ground to believe him guilty, upon which competent evidence the examining magistrate's mind may act judiciously. That is the rule. The rule as to authentication is, as pointed out here in the argument, a certificate in substance to the effect that the document would be entitled to be received in evidence in the demanding country. The certificate is that in Canada they would be entitled to be received. The objection is that the certificate should be that in Canada they would be received. The certificate is in the language of the statute, and is a substantial compliance with it. The evidence as to the probable guilt of the defendant leaves nothing for a judge to ponder over. It may all be perjury, but unless it is all perjury, there is nothing here in the way of a matter of fact; there is nothing for a judge to give consideration to.

There will be an order dismissing the writ.

KELLY *v.* GRIFFIN, JAILER OF LAKE COUNTY,
ILLINOIS.APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 777. Argued April 6, 7, 1916.—Decided April 17, 1916.

That the arrest by state or municipal authorities is illegal does not affect the jurisdiction of a United States Extradition Commissioner. The omission of a formal act of release of one held under an illegal arrest by state authorities and of a subsequent formal and legal arrest thereafter by a United States Marshal under an extradition warrant *held*, under the circumstances of this case, not to furnish grounds for release on *habeas corpus*, it not appearing that a different rule applies in the demanding country.

In this case *held* that the complaint charging the person demanded with having committed in Canada perjury, obtaining money under false pretenses and receiving stolen property, states offenses of perjury and obtaining money by false pretenses within the meaning of the extradition provisions of the treaty with Great Britain both in Canada where the offenses were committed, and in Illinois where the person demanded was arrested; but *quære* whether it does state an offense of receiving stolen property which is a crime in both jurisdictions.

Where the complaint properly charges an offense included in the extradition treaty and also charges one that is not included, the court will not release on *habeas corpus*, but will presume that the demanding country will respect an existing treaty and only try the person surrendered on the offenses on which extradition is allowed.

THE facts, which involve the validity of an order for extradition under the treaties with Great Britain, are stated in the opinion.

Mr. John S. Miller, with whom *Mr. Edward Osgood Brown* and *Mr. Pierce Butler* were on the brief, for appellant:

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Argument for Appellant.

The United States Commissioner did not have jurisdiction of the person of appellant.

Appellant's arrest and detention without warrant were unlawful. Rev. Stat., § 5270; *Ex parte Cohen*, 8 Can. Cr. Cas. 312; *Re Dickey*, *Id.* 318; *State v. Shelton*, 79 N. Car. 605, 607-608; *Malcolmson v. Scott*, 56 Michigan, 459; *Scott v. Eldridge*, 154 Massachusetts, 25; *Harris v. Louisville &c. Ry.*, 35 Fed. Rep. 116; *Kurtz v. Moffitt*, 115 U. S. 487.

Appellant could not lawfully be turned over by the Chicago police officers to, or be lawfully taken from them by the United States marshal. He should have been set at liberty from such illegal arrest and detention before he could be lawfully arrested on the Commissioner's warrant. *Ex parte Cohen*, *supra*; *Hooper v. Lane*, 6 H. L. Cas. 443; *Mandeville v. Guernsey*, 51 Barb. 99.

The enactment by the Parliament of the Dominion of Canada of a statute which gives to a different moral offense, which is not a crime in Illinois or in the United States or at common law,—the name of a crime mentioned in an extradition treaty with Great Britain does not bring such different moral offense within the provisions of the treaty.

Such an enactment, however, has been made in the Criminal Code of Canada, and it is under it that the extradition of the petitioner for perjury is sought.

By the common law, by the statutes of the United States and by the statutes of Illinois, where the petitioner was seized, a false statement under oath to be "perjury" must be material to the issue pending. Coke 3d Inst. 167; Archbold's Cr. Pl. Ev. & Pr., 24th ed. 1160; *R. v. Townsend*, 10 Cox, 356; § 225, Crim. Code Illinois; § 125, Crim. Code U. S.

By the statutes of Canada "perjury" is a false statement under oath in a judicial proceeding whether said statement is material or not. This makes the offense against the laws of Canada, there denominated "per-

jury"—an entirely different thing from the crime of "perjury" known to the common law, to the statutes of Illinois, or to the statutes of the United States.

The extraditable crime named in the Convention of 1889, enlarging the Webster-Ashburton Treaty of 1842, as "perjury," is the common-law crime of "perjury," the definition of which is the same as that given of "perjury" in the statutes of Illinois and of the United States and of the United Kingdom. Ch. 6 of 1 & 2, Geo. V.

By indirection in 1869 and directly in 1892 and again in 1906, the Dominion Parliament denominated as "perjury" a moral dereliction which was not and is not a crime at common law, nor by the statutes either of Great Britain or of the United States or of any of them.

This did not affect the meaning of the term "perjury" as used in the Convention of 1889. Statutes of Canada, 1869, Ch. 23, 32-33 V.; 1886, Ch. 154, § 5; 1892, Ch. 29-55 & 56 V.; 1906, Ch. 146, § 170.

Not only must an offense be named in the treaty as extraditable, it must also be considered a crime in both the demanding and surrendering country. *Wright v. Henkel*, 190 U. S. 58.

Thus the offense denominated "perjury" in Canada is not in the United States a crime.

It is not an answer that the Commissioner or court in the United States might have considered the false statement probably material to the matter under investigation by the Canadian Committee.

If extradited for "perjury" the petitioner may be tried and condemned in Canada without proof or in the face of disproof of that which constitutes "perjury" in the United States. It is impossible to extradite for "perjury" from the United States to Canada and avoid this situation. Extradition from the United States to Canada for this alleged crime is therefore not permissible. *United States v. Rauscher*, 119 U. S. 407.

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Argument for Appellees.

The alleged false statement of appellant on which the charge of perjury is based was not under oath.

The Public Accounts Committee was without power or authority to examine him under oath, with respect to the matter testified about.

The tribunal must have had jurisdiction of the cause in which the oath was administered, and this committee lacked that jurisdiction. *People v. Pankey*, 1 Scam. 80; *Maynard v. People*, 135 Illinois, 416; *Hereford v. People*, 197 Illinois, 222.

The complaints and the competent evidence before the Commissioner did not show probable cause that appellant was guilty of the crime of obtaining money by false pretenses—(1) under the law of Canada; and (23) under the law of Illinois. Crim. Code Canada, § 404; Rev. Stat. Illinois, Ch. 38, § B 16; *Jackson v. People*, 122 Illinois, 139, 149; *Moore v. People*, 190 *id.* 333, 335.

The complaints and the competent evidence before the Commissioner did not show probable cause of the commission by appellant of the crime of embezzlement, or larceny or receiving of money, valuable securities or other property, knowing the same to have been embezzled, stolen or fraudulently obtained.

Mr. Almon W. Bulkley and *Mr. Henry B. F. Macfarland*, with whom *Mr. Clair E. More* was on the brief, for appellees:

The Webster-Ashburton Treaty, the Blaine-Pauncefote Treaty, and the supplement thereto, as are treaties of this character, are executory, and the duty to perform is imposed upon the executive, not the judicial, department. *Terlinden v. Ames*, 184 U. S. 270, 288.

Habeas corpus is to determine whether prisoner is lawfully detained. *Nishimura Ekiu v. United States*, 142 U. S. 651.

If committing magistrate has jurisdiction, the offense

charged is within the twenty, and if the magistrate has before him competent legal evidence his decision will not be reviewed on *habeas corpus*. *Terlinden v. Ames*, 184 U. S. 270-288; *Ornelas v. Ruiz*, 161 U. S. 502-508; *Bryant v. United States*, 167 U. S. 104; *Yordi v. Nolte*, 215 U. S. 227; *Nishimura Ekiu v. United States*, 142 U. S. 651-652; *McNamara v. Henkel*, 226 U. S. 520; *Ex parte Yarborough*, 110 U. S. 651-653.

A preliminary complaint on information and belief is not unlawful. *Yordi v. Nolte*, 215 U. S. 227.

It is immaterial how Commissioner obtains jurisdiction of person. Cases *supra* and *Wright v. Henkel*, 190 U. S. 40; *Iasigi v. Van De Carr*, 166 U. S. 391; *In re McDonald*, 11 Blatchf. 170; *Kelly v. Thomas*, 81 Massachusetts, 192; *Pettibone v. Nichols*, 203 U. S. 192; *Mahon v. Justice*, 127 U. S. 712; *Ker v. Illinois*, 119 U. S. 437.

It is not material what the Canadian statute of perjury is if the perjury charged comes within the terms of the Treaty and United States law. *Grin v. Shine*, 187 U. S. 180; *In re Luis Oteiza*, 136 U. S. 330; *Bryant v. United States*, 167 U. S. 104; *Benson v. McMahon*, 127 U. S. 457; *Ornelas v. Ruiz*, 161 U. S. 502-508.

The Canadian Code is the equivalent of the Illinois and United States statutes regarding perjury. 22 Amer. & Eng. Ency. 684; 2 Wharton's Crim. Law (9th ed.), § 1244; *United States v. Landsberg*, 23 Fed. Rep. 585; *Regina v. Overton*, 2 Moody's Crown Cases, 336-340; *State v. Rosenberg*, 92 Atl. Rep. 145; *Dilcher v. State*, 39 Oh. St. 130.

The evidence showed materiality of alleged false assertions.

The regularity of appointment or procedure of Public Accounts Committee is not material in this proceeding. *Maynard v. People*, 135 Illinois, 416; *Greene v. People*, 182 Illinois, 178, 282.

The alleged defect was waived by Kelly's appearing and

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testifying without objection or protest. *Maynard v. People*, 135 Illinois, 416, 430.

The evidence shows sufficient facts for jurisdiction.

Whether anyone was deceived or relied on alleged false pretenses is a question of fact not reviewable here. *McNamara v. Henkel*, 226 U. S. 520, and cases cited; *Thomas v. People*, 113 Illinois, 531-537; *Keys v. People*, 197 Illinois, 638-641; *People v. Goodhart*, 248 Illinois, 373.

The evidence was sufficient to sustain false pretenses.

Embezzlement, larceny, receiving money knowing it to have been embezzled, stolen or fraudulently obtained, is within treaty, and is a crime in both countries. *United States v. Gaynor*, 146 Fed. Rep. 766; *Greene v. United States*, 154 Fed. Rep. 401; *Greene v. United States*, 207 U. S. 596.

See also the following statutes: § 170, Can. Crim. Code (perjury); § 225, Ch. 38 Rev. Stat. Ill. (perjury); § 5392 of the U. S. Statutes (perjury); §§ 404, 405 and 406, Can. Crim. Code (false pretenses); § 96, Ch. 38, Rev. Stat. Ill. (false pretenses); § 347 and sub-secs., Can. Crim. Code (theft); § 359 and sub-sec. (c), Can. Crim. Code (theft by employee of government or municipality); §§ 399, 400 and 402, Can. Crim. Code (receiving stolen property); § 167, Ch. 38 Rev. Stat. Ill. (Larceny); § 74, Ch. 38, Rev. Stat. Ill. (embezzlement); § 80, Ch. 38, Rev. Stat. Ill. (embezzlement or fraudulent conversion by state or municipal officer); § 239, Ch. 38, Rev. Stat. Ill. (receiving stolen goods); §§ 5438, 5497, Rev. Stat. U. S. (false or fraudulent claims against the Government).

MR. JUSTICE HOLMES delivered the opinion of the court.

The appellant was held for extradition to Canada and petitioned for and obtained a writ of *habeas corpus*. After a hearing upon the returns to the writ and to a writ of certiorari issued to the Commissioner by whose warrant the

petitioner was detained, the District Judge discharged the writ. An appeal was allowed and several objections have been pressed to the proceeding, which we will take up in turn. The matter arises out of frauds in the construction of the new parliament buildings at Winnipeg, in which Kelly the contractor and a number of public men are alleged to have been involved.

First it is said that jurisdiction of the appellant's person has not been obtained legally. On October 1, 1915, he was arrested without a warrant, on a telegram from Winnipeg. The next day a complaint was made before the Commissioner by the British Vice-Consul General in Chicago upon information and belief, a warrant was issued, and the petitioner was turned over to the United States Marshal by the Chicago police. On October 15 a new complaint was filed by the British Consul General, a new warrant was placed in the hands of the marshal and the former complaint was dismissed. *Wright v. Henkel*, 190 U. S. 40, 42, 44, 63. The contention is that the original arrest was illegal and that the appellant was entitled to be set at liberty before the warrant of October 2 or that of October 15 could be executed with effect.

But however illegal the arrest by the Chicago police it does not follow that the taking of the appellant's body by the marshal under the warrant of October 2 was void. The action of the officers of the State or city did not affect the jurisdiction of the Commissioner of the United States. Furthermore the order dismissing the complaint of October 2 was that the appellant be discharged forthwith from custody; so that on the face of the record it would seem that before being held under the present warrant the appellant had the moment of freedom which he contends was his right. It is urged that the Canadian authorities are trying to take advantage of their own wrong. But the appellant came within reach of the Commissioner's warrant by his own choice, and the most that can be said

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is that the effective exercise of authority was made easier by what had been done. It was not even argued that the appellant was entitled to a chance to escape before either of the warrants could be executed. This proceeding is not a fox hunt. But merely to be declared free in a room with the marshal standing at the door having another warrant in his hand would be an empty form. We are of opinion that in the circumstances of this case as we have stated them the omission of a formal act of release and a subsequent arrest, if they were omitted, furnishes no ground for discharging the appellant upon *habeas corpus*. All the intimations and decisions of this Court indicate that the detention of the appellant cannot be declared void. *Pettibone v. Nichols*, 203 U. S. 192. *Iasigi v. Van De Carr*, 166 U. S. 391, 393, 394. *Ekiu v. United States*, 142 U. S. 651, 662. If we were satisfied that a different rule would be applied by the final authority in Great Britain other questions would arise. *Charlton v. Kelly*, 229 U. S. 447. But we are not convinced by anything that we read in *Hooper v. Lane*, 6 H. L. C. 443, that a different rule would be applied and we think it unnecessary to discuss the differences in detail.

The complaint of October 15 charges perjury, obtaining money by false pretenses, and, conjointly, stealing or embezzling and unlawfully receiving money and other property of the King which had been embezzled, stolen or fraudulently obtained by means of a conspiracy as set forth. The perjury alleged is swearing falsely to the proportion of cement sand and broken stone put into the caissons of the new parliament buildings at Winnipeg, in a judicial proceeding before the Public Accounts Committee of the Legislative Assembly of the Province of Manitoba, the appellant knowing his statements to be false. It is objected that although perjury is mentioned as a ground for extradition in the treaty, the appellant should not be surrendered because the Canadian Criminal Code, § 170,

defines perjury as covering false evidence in a judicial proceeding 'whether such evidence is material or not.' As to this it is enough to say that the assertions charged here were material in a high degree and that the treaty is not to be made a dead letter because some possible false statements might fall within the Canadian law that perhaps would not be perjury by the law of Illinois. "It is enough if the particular variety was criminal in both jurisdictions." *Wright v. Henkel*, 190 U. S. 40, 60, 61. There is no attempt to go beyond the principle common to both places in the present case. It is objected further that although the above committee was authorized to examine witnesses upon oath it was only in 'such matters and things as may be referred to them by the House.' But even if there were not some evidence and a finding, *Ornelas v. Ruiz*, 161 U. S. 502, 509, the nature of the investigation, the purposes for which the committee was appointed, and the fact that the appellant appeared before it without objection would warrant a presumption of regularity in a summary proceeding like this.

The plan for the foundations of the buildings was changed from piling called for by the written contract to caissons filled with concrete and the false representations alleged concern the amount of concrete, lumber, iron rings and bolts used in the extra work. They consisted in bills or 'progress estimates' addressed to the Provincial Government for 'labor and materials supplied,' setting forth the amount of each item thus stated to have been supplied. It is objected that the amounts demanded by the bills were paid not upon the bills but upon vouchers coming from the Department of Public Works, and that the provincial architect who certified the bills was not deceived. The person who made out the certificates relied upon the bills in good faith, and it appears that without the bills the payments would not have been made. The fact that there were other steps necessary in addition

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to sending in a false account, or that other conspirators coöperated in the fraud, does not affect the result that on the evidence Kelly obtained the money from the Provincial Government by fraudulent representations to which he was a party and that his false statement was the foundation upon which the Government was deceived.

The last charge, stealing or embezzling and receiving money fraudulently obtained needs a word of explanation. It may be assumed that there is no evidence of larceny or embezzlement as (commonly) defined, but the receiving of property known to have been fraudulently obtained is a crime by the laws of both Canada and Illinois. There may be a doubt whether the appellant, if a party to the fraud, received the money of the Government directly from it, or through a third hand so as to be guilty under this count of the complaint. We are not prepared to pronounce his detention upon the count unjustifiable in view of the finding. We assume, of course, that the Government in Canada will respect the convention between the United States and Great Britain and will not try the appellant upon other charges than those upon which the extradition is allowed. Therefore we do not think it necessary to require a modification of the complaint before the order discharging the writ of *habeas corpus* is affirmed.

Final order affirmed.